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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY²**
11 **SOPHIA A. DORITY**) **PERSONAL INCOME TAX APPEAL**
12 **(party requesting innocent spouse relief)¹**) Case No. 506726

	<u>Years</u>	<u>Amount of Relief Requested³</u>
	1999	\$9,172.31
	2000	\$29,097.24
	2002	\$721.60
	2004	\$3,812.49

18 Representing the Parties:

19 For Appellant: Sophia A. Dority
20 For Franchise Tax Board: Diane L. Ewing, Tax Counsel III

22 ¹ Appellant resides in San Jose in Santa Clara County, California. The Board Proceedings Division sent a letter dated
23 September 9, 2009, to appellant's husband, Ralph Dority, notifying him of his right to join the appeal by filing an appeal
24 on or before December 8, 2009. Mr. Dority did not join this appeal. In addition, according to respondent, appellant's
25 husband did not respond to its December 29, 2008 letter requesting information with respect to appellant's request for
26 innocent spouse relief. (Resp. Opening Br., p. 3.)

27 ² As a result of appellant's having waived an appearance previously scheduled for the August 24, 2010 Board Hearing, this
28 matter was rescheduled for the September 14, 2010 nonappearance consent calendar. At appellant's request, this matter was
subsequently returned to the August 24, 2010 oral hearing calendar and then rescheduled to the September 14, 2010 oral
hearing calendar.

³These are the amounts respondent lists for each of the taxable years at issue in its opening brief and in its Notice of Action-
Denial dated July 17, 2009, which appellant attached to her Appeal Letter.

- 1 QUESTIONS: (1) Whether appellant timely elected innocent spouse relief (ISR) as required in
2 order to be eligible for relief pursuant to Revenue and Taxation Code (R&TC)
3 section 18533, subdivisions (b), (c) and (h).
- 4 (2) Whether the Board has jurisdiction to consider appellant's request for equitable
5 ISR under subdivision (f) of R&TC section 18533, pursuant to the Board's
6 opinion in the *Appeal of Patricia Tyler-Griffis*, 2006-SBE-004, Dec. 12, 2006
7 decision (*Tyler-Griffis*).
- 8 (3) Assuming the Board has jurisdiction, whether appellant has demonstrated that
9 she is entitled to innocent spouse relief for any of the tax years at issue.

10 HEARING SUMMARY

11 I. Background

12 Appellant and her husband, Ralph Dority III, were married on September 18, 1992.
13 (Resp. Opening Br., exhibit L.) During their marriage, the couple had two children. (*Ibid.*) According
14 to appellant, the couple separated in October 2004, appellant's husband moved to San Diego for two
15 years, the couple currently reside with their children in the same household, and they are still married.
16 (*Ibid.*) There is no indication there are any pending divorce proceedings.

17 Tax Year 1999

18 On October 15, 2001, the couple filed a late 1999 joint California return on which they
19 reported wages of \$181,536 and adjusted gross income (AGI) of \$181,526. They claimed a standard
20 deduction of \$5,422 and reported taxable income of \$176,104. After applying personal and two
21 dependent exemption credits, their self-assessed tax was \$12,396. They claimed income tax
22 withholdings of \$7,804 and a \$25 overpayment of state disability insurance withholdings resulting in a
23 reported balance due amount of \$4,567. (Resp. Opening Br., pp. 1-2, exhibits A-B.) The couple
24 remitted a payment of \$100 when they filed their 1999 return. (*Ibid.*, exhibits A, C.) In addition,
25 respondent received several payments totaling \$1,794.38 between May 16, 2002 and July 30, 2009,⁴
26 and \$27.88 was transferred from the couple's 1998 account to their 1999 account. (*Id.*, at p. 2, fn. 3,
27

28 ⁴ In its opening brief, respondent inadvertently stated that it received several payments amounting to \$1,494.38 between June 17, 2002 and July 30, 2009. (Resp. Opening Br., p. 2, fn. 3.)

1 exhibit C.) Respondent accepted the couple's 1999 return and subsequently imposed a late filing
2 penalty of \$1,148.00 and an amnesty penalty of \$1,008.97 plus interest. (*Id.* at p. 2, exhibit C.)

3 Tax Year 2000

4 On January 29, 2003, the couple filed a late 2000 joint California return on which they
5 reported wages of \$277,639 and AGI of \$296,040. They claimed a standard deduction of \$5,622 and
6 reported taxable income of \$290,418. After applying personal and two dependent exemption credits,
7 their self-assessed tax was \$23,270. They claimed income tax withholdings of \$14,474 and excess state
8 disability insurance withholdings of \$262 resulting in a reported balance due amount of \$8,534. (Resp.
9 Opening Br., p. 2, exhibit E.) The couple did not remit any payment when they filed their 2000 return,
10 but a payment of \$182 was received on the joint 2000 account on September 16, 2002. (*Id.*, at p. 2, fn.
11 4., exhibit F.) Respondent accepted the couple's 2000 return and subsequently imposed a late filing
12 penalty of \$2,133.50, a notice and demand penalty of \$5,817.50, an amnesty penalty of \$1,867.65, and
13 a filing enforcement cost fee of \$109.00 plus interest. (*Ibid.*)

14 Tax Year 2002

15 The couple filed a timely 2002 joint California return on which they reported wages of
16 \$144,078 and AGI of \$144,092. They claimed a standard deduction of \$6,008 and reported taxable
17 income of \$138,084. After applying personal and two dependent exemption credits, their self-assessed
18 tax was \$8,429. They claimed income tax withholdings of \$7,107 resulting in a reported balance due
19 amount of \$1,322. (Resp. Opening Br., p. 2, exhibit H.) The couple did not remit any payment when
20 they filed their 2002 return, but payments totaling \$1,624.80 were applied to the couple's 2002 joint
21 account between October 1, 2007, and October 20, 2008. (*Id.* at p. 2, fn. 5, exhibit I.) Respondent
22 accepted the couple's 2002 return and subsequently imposed a late payment penalty of \$330.50,⁵ an
23 amnesty penalty of \$67.29, a lien fee of \$11.00, and a collection cost fee of \$101.00 plus interest.
24 (*Ibid.*)

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26 _____
27 ⁵ This amount consists of [\$66.10 (\$1,322 x 0.05) + \$264.40 (\$1,322 x 0.005 x 40)]. (Resp. Opening Br., Exhibit I, pp. 2-
28 3. See also R&TC § 19132.) In its opening brief, respondent inadvertently stated that the underpayment of tax penalty
amounted to \$116.48 (5 percent of the underpayment) and \$264.40 (monthly penalty calculated at ½ percent monthly on
the underpaid tax.). (Resp. Opening Br., p. 2.)

1 Tax Year 2004

2 The couple filed a timely 2004 joint California return on which they reported both wages
3 and California AGI of \$101,398. After claiming a standard deduction of \$6,330, they reported a
4 taxable income of \$95,068. They claimed personal and two dependent exemption credits and reported
5 self-assessed tax of \$4,190. They also claimed income tax withholdings of \$1,856 and they reported a
6 balance due of \$2,334. The couple did not remit any payment when they filed their 2004 return.
7 Respondent accepted the couple's 2004 return and subsequently imposed a late payment penalty of
8 \$583.50 and a collection cost fee of \$101.00. (Resp. Opening Br., p. 3, exhibits J, K.)

9 Collection Activities

10 According to respondent, it began to notify appellant and her husband of impending
11 collection actions when the balances due remained unpaid. (Resp. Opening Br., p. 7.) Respondent
12 asserts that it would have sent notices every 45 days, which would have included a Past Due Notice,
13 possibly a Delinquent Notice, and a Final Notice. Respondent's records show that a Final Notice for
14 tax years 1999 and 2000 was mailed on April 7, 2003, a Final Notice for tax year 2002 was mailed on
15 February 19, 2004, and a Final Notice for tax year 2004 was mailed on May 10, 2006. (*Id.*, exhibits
16 N-P.)

17 Request for Innocent Spouse Relief

18 On October 28, 2008, appellant requested innocent spouse relief for tax years 1999,
19 2000, 2002, and 2004. She filed a signed completed copy of FTB Form 705, Request for Innocent
20 Spouse Relief, which provides in Part III that respondent will review the request and determine whether
21 the claimant qualifies for relief under R&TC section 18533, subdivisions (b), (c), and (f), among other
22 provisions. (Resp. Opening Br., exhibit L.) Appellant attached a Statement in Support of Innocent
23 Spouse Relief Request dated October 27, 2008, to the FTB Form 705. (*Ibid.*) Appellant also submitted
24 a signed completed FTB Form 3561, Installment Agreement Financial Statement dated October 25,
25 2008, with attached copies of bank and earnings statements. (*Id.*, exhibit M.) In a facsimile transmittal
26 cover sheet to respondent dated October 27, 2008, appellant stated that she was attaching "Form 3561
27 per your request dated 9/24/08." (*Ibid.*) On the Installment Agreement Financial Statement, appellant
28 listed her dependents, employment information, bank account, vehicle, monthly income and expenses,

1 credit obligations, other expenses; she stated that her husband pays the monthly rent payment for an
2 unknown amount. (*Ibid.*)

3 According to respondent, it sent a notice on December 29, 2008, to appellant's spouse
4 informing him of appellant's request for innocent spouse relief for the tax years at issue and requesting
5 that he provide any relevant information; he did not respond to its notice. (Resp. Opening Br., p. 3.)

6 On July 17, 2009, respondent sent appellant a Notice of Action (NOA) denying
7 appellant's request for innocent spouse relief because she failed to establish she did not have
8 knowledge of the underpayment of the tax liabilities and she did not provide documentation supporting
9 a determination that innocent spouse relief should be granted; respondent provided a detailed account
10 summary for the tax years at issue in its NOA. (Appeal Letter, Attachment.) Respondent stated in the
11 NOA that it was notifying appellant's spouse of its determination. (*Ibid.*) This appeal followed.

12 Contentions

13 Appellant's Contentions

14 Appellant asserts that she is entitled to innocent spouse relief for each of the tax years
15 at issue. She contends that she became aware of the outstanding tax liabilities as early as November
16 2004 when her husband's attorney presented her with a joint bankruptcy petition, which she declined
17 to sign. (Appeal Letter, p. 1.)⁶ She contends that, although she lacks the documentation or resources
18 to prove her position, she believed at the time the joint returns were filed that they would be paid.
19 (*Ibid.*) She also contends that her husband has possession of her W-2 forms for 1999 and 2000, as
20 well as copies of the tax returns; she has subsequently located a copy of the return for tax year 1999.
21 (*Id.* at pp. 1-2.) She asserts that her husband's bankruptcy attorney may have kept copies of the
22 returns. Appellant contends that she does not believe that she would owe respondent much in taxes
23 because she has always received a federal refund since she began filing separate returns. (*Id.* at p. 2.)
24 She further contends that she would be happy to pay any amount she might owe respondent; she
25 claims that, as of August 15, 2009, she paid \$800 against an original outstanding income tax balance
26 of \$968 for tax year 2008, and she will have paid the remaining balance by the end of August 2009.

27 _____
28 ⁶ Staff notes that in her reply brief, appellant states that her husband filed for Chapter 13 joint bankruptcy in October 2004.
(App. Reply Br., p. 1.)

1 (*Ibid.*)

2 Appellant argues that she is appealing against “the astounding amount of
3 underpayment.” (Appeal Letter, p. 2.) She contends that if she had known it was permitted, she
4 would have filed separately much sooner than 2005. (*Ibid.*) According to appellant, her husband
5 informed her that she was required to file jointly and she declined to file a joint bankruptcy petition
6 because the tax debts belonged to her husband, he was leaving her, and she “wanted nothing more to
7 do with him or his squandering, cheating and lying.” (*Ibid.*) Appellant asserts that the Internal
8 Revenue Service has never approached her for any payment of her husband’s tax liabilities since the
9 filing of the 2004 bankruptcy petition and she has consistently filed and paid her own taxes. (*Ibid.*)
10 Appellant contends that she never earned the money owed by her husband and she only signed the
11 returns for tax years 1999, 2000, 2002, and 2004 because her husband informed her that they were
12 required to file joint returns. (Resp. Opening Br., exhibit L, p. 2.) She further contends that she never
13 saw his paycheck or had control of his earnings at any time during their marriage and they always
14 maintained separate bank accounts. (*Ibid.*) She also contends that she became a United States citizen
15 on October 16, 2008. (*Ibid.*)

16 In an effort to support a claim of financial hardship, to keep her job, and not have her
17 wages garnished, appellant contends that she provided respondent financial statements April 19, 2006,
18 May 18, 2006, June 21, 2007, May 21, 2008, and October 29, 2008, plus she provided respondent with
19 earnings statements, bank statements, and spending reports. (Appeal Letter, p. 2.) In her Appeal
20 Letter, appellant asserts that she earns \$3,000 each month after tax, she has two teenage twin daughters
21 in their second year of high school, and they have no savings. (*Ibid.*) Also, she asserts that her job is
22 at night because it pays better, she frequently employs a babysitter, and her husband pays the rent as a
23 goodwill gesture for them but he could stop paying the rent at any time. (*Ibid.*) Appellant contends
24 that if her husband stops paying the rent she would have only earnings to meet her expenses. (*Ibid.*)
25 She also contends that her car was 15 years old, her “job security is as precarious as many other
26 people’s in this economy,” and she had several job-related injuries in 2009 (strained back and
27 tendonitis), which had not previously happened. (*Ibid.*)

28 In her reply brief, appellant discusses the purported ratio of earnings between her

1 husband and herself for each of the tax years at issue. She contends that the ratio of earnings for 1999
2 is 75:25 based on the fact that her husband earned \$144,833 and appellant earned \$36,703, as evident
3 from the Social Security Statement dated June 16, 2009. (App. Reply Br., p. 1, exhibits A-B.) She
4 asserts that penalties and interest account for most of the 1999 outstanding balance of \$9,172 and "in
5 the last ten years good faith efforts have been made in the amount of \$9,726;" appellant attached a
6 copy of respondent's July 17, 2009 NOA to her reply brief. (*Id.*, Exhibit C.) She contends that the
7 ratio of earnings for 2000 is 93:7 based on the fact her husband earned \$275,502 and she earned
8 \$20,538. (*Id.*) She contends that the ratio of earnings for 2002 is 90:10 based on the fact her husband
9 earned \$130,015 and she earned \$14,077. (*Id.*, Exhibit D.) For 2004, appellant contends the ratio of
10 earnings is 69:31 based on the fact her husband earned \$69,647, including unemployment
11 compensation benefits, and appellant earned \$31,751. (*Id.*)

12 In her reply brief, appellant asserts that in October 2004 her husband filed for Chapter
13 13 joint bankruptcy protection and she declined to complete the related partially completed forms that
14 she received. (App. Reply Br., p. 1.)⁷ She attached to her reply brief a typed statement purportedly
15 from her husband that discusses appellant's option of filing a joint bankruptcy petition with him and
16 purportedly suggests appellant could avoid paying the tax liabilities by returning to the United
17 Kingdom. (*Ibid.*, exhibit F.) Appellant asserts that she was not a United States citizen until 2008 and
18 she had "considerable duress" at the thought she might be deported for failing to pay taxes. (*Ibid.*)
19 Appellant contends she had a conversation with appellant's husband's bankruptcy attorney at an
20 unspecified time who advised her there might be grounds for filing a request for innocent spouse relief
21 and sent her the forms. (*Id.* at p. 2) In her reply brief, appellant states, "Upon perusal of the forms
22 Appellant could see no avenue of opportunity to be eligible for this type of relief and did not file
23 accordingly." (*Ibid.*) Appellant asserts that she thought she was receiving notices of delinquent tax
24 payments merely as a courtesy and did not believe they were intended to notify her of her own
25 personal liability. (*Ibid.*) Appellant argues that her husband "controlled all input of tax filing
26 exclusively," she did not prepare the tax filings, she did not have access to the return filing software,
27

28 ⁷ In her reply brief, appellant cites to an exhibit E, but there is no exhibit E attached to appellant's reply brief. Staff notes, however, that exhibit D includes copies of a United States Bankruptcy Court documents.

1 her husband's paychecks, bank accounts or tax information, and her husband explicitly told her that, as
2 a married couple, they were legally required to file joint returns. (*Ibid.*)

3 In her reply brief, appellant explains that in 1989 she began working in Washington,
4 D.C. for the British Navy on an Embassy posting from the United Kingdom (UK), she worked in this
5 capacity for three years, and she returned to the UK in 1992. (App. Reply Br., p. 2.) She further
6 explains that during her term in Washington D.C., she was subject to UK regulations, she did not pay
7 United States (U.S.) taxes and remained single; she notes that Washington D.C. is not a community
8 property state and she thus had no reason to be exposed to special tax laws. (*Ibid.*) She asserts that
9 she and her husband married in 1992 prior to their move to the UK where they lived for the next four
10 years. (*Ibid.*) She also asserts that she gave birth to twin girls in 1994 and her husband returned to the
11 U.S. without her or their children. (*Ibid.*) Appellant further asserts that in 1996 her husband agreed to
12 sponsor her for a "Green Card," (i.e., U.S. permanent residency status) and informed her that married
13 couples were required to use joint filing status on their income tax returns. (*Ibid.*) According to
14 appellant, she had no reason not to believe her husband's erroneous instructions in 1996 because it did
15 not directly affect her and there was no reason for this to be an issue. (*Ibid.*) Appellant contends that
16 she returned to the U.S. in 1996 and worked again for the British Embassy without being subject to
17 "normal tax laws." (*Ibid.*) Appellant also contends that in 1997 her husband was promoted and
18 relocated to Texas, which is a community property state, in 1998, the family relocated to California,
19 and her husband continued to relocate the family according to the requirements of his job. (*Ibid.*)
20 Appellant further states that she was required each time to quit her job and start over in order to keep
21 the family together, her husband decided when he was moving and appellant was not informed of his
22 job plans or financial status, which caused her "further duress." (*Ibid.*) Appellant asserts that she paid
23 from her salary all child care, medical expenses, and children's clothes, her husband inconsistently
24 paid the rent and never for longer than a year at a time, and his "erratic lifestyle and amoral behavior
25 contributed to duress." (*Id.* at pp 2-3.) Appellant argues that her husband's payment of rent did not
26 constitute a "significant benefit" for purposes of innocent spouse relief. (*Ibid.*) Appellant also argues
27 that she would suffer economic hardship if equitable relief is not granted she refers to her attached
28 financial, wage and bank statements. (*Id.* at p. 3, exhibits G, H.) She further argues that she did not

1 know and had no reason to know about the items causing the underpayment or that the tax would not
2 be paid. (*Ibid.*) In addition, she argues that the tax at issue is attributable to her husband. (*Ibid.*)

3 Appellant argues that there is no substantiation for respondent's claims that she is not
4 separated from her husband, that appellant earns sufficient income to pay joint liabilities, and that she
5 had an ongoing financial relationship with her husband. (App. Reply Br., p. 3.) According to
6 appellant, her husband has openly conducted two extramarital affairs during the period at issue and at
7 least one of these affairs could be substantiated by members of the community where she lives. (*Ibid.*)
8 Appellant contends that during the course of her husband's first affair, appellant was subjected to open
9 humiliation and verbal abuse and in 2004 her husband moved out of their household to San Diego, as
10 evident by the address listed on the bankruptcy petition. (*Ibid.*, Exhibit E.)⁸ Appellant explains the
11 "group household" in which she, her husband and the children live under the same roof as follows:

12 The children live in the same household as the Appellant and her husband. The children
13 and the Appellant have the rooms upstairs in the rental, to which the spouse is not
14 welcome. In any case the Appellant is a graveyard worker and is not present at night.
15 The spouse has a bedroom and bathroom downstairs which he uses when he is not
16 traveling and which is also used by babysitters when he is not available. The reason for
17 the group household evolved through the spouse's negative credit caused by the
18 bankruptcy where the spouse could not afford to support himself or his family.

16 (*Ibid.*) Appellant also contends that she does not earn enough money to pay even one month's rent and
17 to support two sophomore students. (*Ibid.*) Furthermore, she contends that she pays all of the PG&E
18 bills for the household and her husband "has never contributed to the household beyond cooking for
19 himself and the children when he is in charge of them and paying the rent and small accessory-type
20 bills." (*Ibid.*)

21 In her reply brief, appellant makes the following additional arguments:

22 It is not in dispute as to whether Appellant followed all the rules correctly in applying for
23 Innocent Spouse relief. Clearly she did not. Had she filed in a timely manner, then at
24 least the 2 year statute law would have been met. However, she has established that she
25 had no reason to question the erroneous instructions given to her in 1996 by her spouse,
26 and had she questioned it; at that time and in that location it would have been non-
27 applicable anyway. With the fragmentation of her marriage and residency it is also
28 understandable that she had no knowledge of what constituted a fair tax return under the
law in California. Non-requesting spouse was and still is secretive and controlling. He
has also recently been diagnosed with ADD and SVR (super ventral tachycardia).
Appellant also suffered duress during the tax years in question. That she is able to reside

⁸ Appellant inadvertently labeled this document "exhibit D," which is also the exhibit letter used for the preceding document attached to her reply brief.

1 with her children and salvage what years are left in the workplace is her only concern and
2 to impose a financial burden on her at a crucial time in her children's life would cause
3 financial hardship and demolish what semblance of normality exists in this already
dysfunctional setup. Her children have suffered enough through the bankruptcy,
separation and adulterous affairs of their father.

4 (App. Reply Br., p. 4.)

5 In her supplemental brief, appellant argues that her marital status only affects one
6 portion of the threshold requirements and is therefore not an effective reason to pursue a divorce. (App.
7 Supp. Br., p. 2.) She asserts that a divorce would make a minimal difference, it would be expensive,
8 and thus increase the financial burdens and affect her children. She also asserts that a divorce would
9 likely result in a joint custody arrangement for her children and she "would like to forestall such an
10 arrangement for the benefit of their emotional estrangement." (*Ibid.*)

11 Appellant states that her mental and physical health is not a factor, but her husband has a
12 defined heart condition and a history of ADHD.⁹ (App. Supp. Br., p. 2.) She argues that the Board
13 may consider these medical conditions "in determining the motives for non payment of taxes." (*Ibid.*)
14 She also argues that her lack of knowledge of these medical conditions before they were diagnosed in
15 2008 "is a reason not to know that the taxes would not be paid." (*Ibid.*)

16 In her supplemental brief, appellant apparently argues that it is "unfair and
17 disingenuous" for respondent "to belittle" appellant's efforts to provide for her daughters and herself
18 through financial hardships created by her husband's behavior and choices. (App. Supp. Br., p. 3.)
19 Appellant asserts that she assumes financial responsibility for all medical bills, clothing, tutoring, extra-
20 curricular activities, school supplies and the majority of food bills and entertainment for the children.
21 (*Id.* p. 2.) Appellant contends that she provided respondent "in detail all paycheck stubs, bank
22 statements, spending and budget forecasts to support her financial hardship relief." (*Ibid.*) Appellant
23 also contends that her car was repossessed after her husband filed bankruptcy, her husband moved out
24 of the household for two years, and he "conducted flagrant affairs." (*Id.* at p. 3.) Appellant further
25 contends that for the next three years she used roommates in exchange for babysitting services, "some
26 of which were unsatisfactory and depressed her children." (*Ibid.*) Appellant asserts that she worked
27

28 ⁹ Staff assumes that ADHD refers to attention deficit hyperactivity disorder.

1 hard to preserve her children's decency. (*Ibid.*) Appellant argues there is no merit in respondent's
2 contention that she may have concealed or been deceitful in reporting any significant benefit from the
3 non-payment of taxes or that she failed to properly report her share of community income. (*Id.* at p .2.)
4 Appellant asserts that in 18 years of marriage she has never had any access to her husband's bank
5 account and she did not have knowledge of his earnings or "even sight of his finances." (*Ibid.*)

6 Appellant concedes that she did not file a request for innocent spouse relief within the
7 applicable statute of limitations. (App. Reply Br., p. 4.) She argues, however, that respondent abused
8 its discretion in not granting her relief by not informing her of her rights of appeal and allowing the
9 applicable statute of limitations to expire. (*Id.* at p. 3; App. Supp. Br., p. 1.) In her reply brief,
10 appellant notes that respondent "took care to notify [her] of the amount of tax owing, compounded
11 with penalties and interest, but failed to advise her "of her rights to appeal, the statue of 2 years for
12 filing the original Innocent Spouse claim or the process of litigation." (App. Reply Br., p. 3.) In her
13 opening brief, appellant asserts that Cheryl Dubose of the FTB informed her that she had "good news,"
14 and she would be transferring appellant's case to the innocent spouse program on October 28, 2009.
15 (Appeal Letter, p. 1.) According to appellant, Bobbie McMaster of the FTB's innocent spouse unit
16 handled appellant's case and recommended denying appellant's request for relief because appellant did
17 not establish she did not have knowledge of the underpayment of the tax liabilities. (*Ibid.*) Appellant
18 appears to argue that respondent, rather than appellant, initiated the transfer of her case from its
19 financial hardship/collections department to its innocent spouse unit and the "timeliness or tardiness of
20 this filing was never in question." (App. Suppl. Br., p. 1.) Appellant also argues that at the time it
21 transferred her case respondent was fully aware of the statute of limitations and it never advised
22 appellant of the statute of limitations "during the entire 5 years of collection/financial hardship
23 references." (*Ibid.*) Appellant further argues that from the time "the notice started to arrive in 2003"
24 respondent had the opportunity to inform her of the statute of limitations "and fulfill the threshold
25 requirements under other sections of the laws governing relief." (*Ibid.*)

26 Respondent's Contentions

27 Statute of Limitations

28 Respondent contends that appellant's request for innocent spouse relief for each tax year

1 except for tax year 2004 is barred under the four-year statute of limitation set forth in R&TC section
2 18533, subdivision (h).

3 Jurisdiction—Equitable Innocent Spouse Relief Claim

4 Respondent contends the Board does not have jurisdiction to review its discretionary
5 decision to deny equitable innocent spouse relief in this case for the unpaid self-assessed tax liability
6 for each of the tax years at issue, because appellant is only entitled to request and respondent only has
7 discretion to grant relief from a self-assessed unpaid tax liability on a joint return pursuant to R&TC
8 section 18533, subdivision (f). Citing *Tyler-Griffis, supra*, respondent argues the Board does not have
9 jurisdiction to review its determination not to grant equitable relief unless such a request is joined with
10 a request for relief under subdivision (b) and/or (c). Because there is no tax deficiency for any of the
11 tax years at issue, respondent asserts that appellant could not make a request for relief under
12 subdivisions (b) and/or (c) for any of the tax years at issue. Accordingly, respondent contends the
13 Board does not have jurisdiction to review its denial of relief for any of the tax years at issue, because
14 appellant's request for equitable relief for each of these tax years could only be considered under
15 section 18533, subdivision (f).

16 Innocent Spouse Relief, Subdivision (b)

17 Respondent contends that under R&TC section 18533, subdivision (b), relief is only
18 available from a proposed or assessed deficiency. Respondent therefore contends that appellant is not
19 entitled to relief for the understatement of tax for any of the tax years at issue pursuant to R&TC
20 section 18533, subdivision (b), because respondent accepted each of the tax returns the couple filed for
21 these tax years as filed and did not assess any additional tax.

22 Innocent Spouse Relief, Subdivision (c)

23 Respondent contends that under R&TC section 18533, subdivision (c), relief is only
24 available from a proposed or assessed deficiency. Respondent therefore contends that appellant is not
25 entitled to relief for the understatement of tax for any of the tax years at issue pursuant to R&TC
26 section 18533, subdivision (c), because respondent accepted each of the tax returns the couple filed for
27 these tax years as filed and did not assess any additional tax.

28 ///

1 Innocent Spouse Relief, Subdivision (f)

2 Threshold Requirements

3 Should the Board determine that it has jurisdiction over appellant's equitable claim for
4 relief here, respondent contends that appellant has not shown error in its determination not to grant
5 innocent spouse relief under subdivision (f). With respect to the threshold requirements of Revenue
6 Procedure 2003-61, section 4.01 (hereinafter referred to as section 4.01), respondent contends that
7 appellant has met some, but not all, of the requirements to be considered eligible for equitable innocent
8 spouse relief. Respondent agrees that appellant meets the first threshold requirement because appellant
9 filed joint returns with her husband for the tax years at issue. Respondent contends that appellant meets
10 the second threshold requirement because relief is not available for her under subdivision (b) or (c).
11 For tax year 2004, respondent contends that appellant meets the third threshold requirement because
12 she timely elected ISR within four years of the date of the first collection activities against her.

13 However, with respect to tax years 1999, 2000, and 2002, respondent contends that
14 appellant does not meet the third threshold requirement because she did not make timely elections of
15 ISR for those years. For tax years 1999 and 2000, respondent contends that appellant's elections were
16 made more than four years after the Final Notice dated April 7, 2003; for 2002, appellant also made her
17 election more than four years after the Final Notice dated February 19, 2004. (Resp. Opening Br., p. 7;
18 Resp. Reply Br., p. 2.)

19 With respect to the fourth, fifth, and sixth threshold requirements, respondent asserts
20 that appellant has not provided evidence showing:

- 21 • that no assets were transferred between appellant and her husband during the tax years at
22 issue;
- 23 • that appellant did not file the joint return with a fraudulent intent;
- 24 • further, it is not possible to determine what portion of the unpaid income tax liability is
25 attributable to appellant's income because she has not provided copies of the joint returns for
26 the years at issue. (Resp. Opening Br., pp. 6-8.) (Staff notes that appellant's 2004 tax
27 return is in the record, attached to respondent's opening brief, exhibit J.)

28 ///

1 Section 4.02

2 With respect to the requirements of Revenue Procedure 2003-61, section 4.02
3 (hereinafter referred to as section 4.02), respondent contends that appellant has not met her burden of
4 showing:

- 5 • she is no longer married to, or is legally separated from her husband, or has not been a
6 member of the same household as her husband at any time during the 12-month period
7 ending on the date she elected ISR. Respondent argues that appellant concedes that she, her
8 husband, and their daughters have continuously lived in the same household during the 12-
9 month period prior to the date she made her ISR election;
- 10 • on the dates when she filed the returns for the tax years at issue she had no knowledge or
11 reason to know that her husband would not pay the income tax liabilities. Respondent
12 asserts that lack of such knowledge is unlikely here considering its issuance of the Final
13 Notices setting forth unpaid tax liabilities on April 7, 2003, and February 19, 2004, and the
14 filing of appellant's husband's bankruptcy prior to the filing of the couple's 2004 return.
15 Further, respondent asserts that appellant has not provided documentary evidence that she
16 and her husband maintained separate checking accounts or other information regarding the
17 household financial matters during the years at issue. Respondent also asserts that appellant
18 has failed to provide a statement from her husband in support of her request for relief.
- 19 • she would suffer economic hardship if relief were not granted. Respondent argues that
20 appellant has not been forthcoming in her explanations as to how much financial assistance
21 in addition to rent appellant receives from her husband.

22 Section 4.03

23 Respondent contends that appellant also fails to satisfy the additional factors set forth in
24 section 4.03. Respondent argues that:

- 25 • appellant was not separated, living apart or divorced from her husband;
- 26 • there is insufficient evidence that appellant would suffer economic hardship if relief were
27 not granted;
- 28 • the evidence indicates she should have reasonably known that her husband would not pay

1 the self-assessed tax liabilities when the returns for the tax years at issue were filed because
2 prior tax liabilities had not been paid (Resp. Reply Br., p. 5.);

- 3 • there is no evidence showing appellant's husband had a legal obligation to pay the tax
4 liabilities pursuant to a divorce or agreement or that she did not receive a significant benefit
5 (beyond normal support) from the unpaid tax liabilities (*ibid.*);
- 6 • appellant may not have complied with income tax laws by failing to report her share of
7 community income (*ibid.*);
- 8 • there is insufficient information establishing that the duress appellant describes due to
9 moving, fear of deportation, her spouse's erratic lifestyle and behavior, open humiliation,
10 and verbal abuse, constitutes abuse (*ibid.*);
- 11 • there is no evidence appellant was in poor mental or physical health when she signed the
12 returns at issue or when she filed her request for relief, especially in light of the fact she
13 states that she was working a physically demanding job (*ibid.*);
- 14 • it would therefore not be inequitable to hold appellant jointly liable for the tax liabilities at
15 issue (*ibid.*).

16 Relief from Liability under R&TC Section 19006, Subdivision (c).

17 Respondent contends that appellant does not qualify for relief under R&TC section
18 19006, subdivision (c). According to respondent, appellant has not shown that she did not know or
19 have reason to know that at the time the couple filed the joint returns for the tax years at issue she did
20 not know that the taxes would not be paid. Respondent thus argues that appellant is not entitled to
21 relief from the tax, penalty or interest amounts that arose from the joint returns for the tax years at
22 issue. (Resp. Opening Br., pp. 9-10.)

23 Applicable Law

24 Statute of Limitations.

25 R&TC section 18533, subdivision (h)(2), provides that the two-year statute of
26 limitations for individuals electing relief under subdivisions (b) and (c) of R&TC section 18533 does
27 not expire before the date that is four years after the first collection activity after October 10, 1999 (the
28 effective date of the Taxpayer Bill of Rights Act of 1999 (Act) revisions to R&TC section 18533.)

1 Jurisdiction-Equitable Claim for ISR.

2 The Act amended R&TC section 18533 in order to expand the availability of innocent
3 spouse relief. Among other things, the Act conformed the provisions of R&TC section 18533 to
4 federal provisions and provided an avenue by which the FTB may award equitable relief (subdivision
5 (f) of R&TC section 18533). The revisions to R&TC section 18533 are generally applicable to any tax
6 liability arising after, or remaining unpaid after, the October 10, 1999 effective date of the Act.

7 Internal Revenue Code (IRC) section 6015 governs federal innocent spouse relief and is
8 structured similar to R&TC section 18533. IRC section 6015 contains provisions for traditional relief
9 in subsection (b), separate liability election in subsection (c), equitable relief in subsection (f), and
10 appeal rights in subsection (e). When a California statute is substantially identical to a federal statute
11 (as in the case of the innocent spouse statutes, IRC section 6015 and R&TC section 18533), federal
12 law interpreting the federal statute may be considered highly persuasive with regard to the California
13 statute. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) Thus, federal authority is
14 applied extensively in California innocent spouse cases. (See *Tyler-Griffis, supra*; Rev. & Tax. Code,
15 § 18533, subd. (g)(2).)

16 However, California’s administrative appeal language differs from the current version
17 of IRC section 6015(e), in that there is no requirement that the appeal concerns relief from a
18 deficiency (as opposed to an underpayment). R&TC section 18533, subdivision (e)(1)(A)(iii), states:

19 The individual *making the election under subdivision (b) or (c)* may appeal the
20 determination of the Franchise Tax Board *of the appropriate relief available to the*
21 *individual under this section* if that appeal is filed [within 30 days of the notice of the
22 Franchise Tax Board’s determination] and the appeal shall be treated as an appeal to the
23 Board under Section 19045. Notwithstanding the preceding sentence, the individual
24 *making the election under subdivision (b) or (c)* may appeal to the board at any time after
25 the date that is six months after the date the election is filed with the Franchise Tax Board
26 and before the close of the [foregoing 30-day] period. (Emphasis added.)

27 In contrast, the current version of IRC section 6015(e)(1) grants the right to appeal to “an
28 individual against whom a deficiency has been asserted and who elects to have subsection (b) or (c)
29 apply.” (Emphasis added.) To the extent there are relevant differences in the statutory language, it is
30 California’s language in R&TC section 18533, not federal authority, which governs the Board’s
31 jurisdiction to hear requests for equitable relief under subdivision (f) of R&TC section 18533.

1 The appeal provision in R&TC section 18533 first sets forth who may file the appeal.
2 Subdivision (e)(1)(A)(iii) provides a right of appeal to “[t]he individual making the election under
3 subdivision (b) or (c)” This provision then sets forth what is at issue in the appeal. Subdivision
4 (e)(1)(A)(iii) states that the subject of the appeal is “. . . the determination of the Franchise Tax Board
5 of the appropriate relief available to the individual under this section” The subject matter of the
6 appeal is not limited to respondent’s determination under subdivision (b) and/or (c). (*Appeal of Tyler-*
7 *Griffis, supra.*) Rather, the scope of the appeal includes the relief available “under this section,” which
8 includes subdivisions (b), (c), and (f). (*Appeal of Tyler-Griffis, supra.*) In *Tyler-Griffis, supra*, the
9 Board determined that it had jurisdiction to review respondent’s denial of equitable relief under
10 subdivision (f) if the request for relief under subdivision (f) was coupled with a request for relief under
11 subdivision (b) and/or (c). If the request for relief under subdivision (f) stands alone, however, the
12 Board determined it would not have jurisdiction to review respondent’s denial of equitable relief.

13 General Legal Background Regarding Innocent Spouse Relief

14 R&TC section 19006, subdivision (b), provides that when a joint return is filed by a
15 husband and wife, the liability for the tax on the aggregate income is joint and several. However,
16 federal and California law provides that an individual who files a joint return may be relieved of all or
17 a portion of such joint and several liability. (Int.Rev. Code, §§ 66 & 6015; Rev. & Tax. Code,
18 §§ 18533, 19006.)¹⁰

19 Determinations under R&TC section 18533 are made without regard to community
20 property laws. (Rev. & Tax. Code, § 18533, subd. (a)(2).) As discussed in greater detail below,
21 R&TC section 18533, subdivision (b), provides for traditional innocent spouse relief; subdivision (c)
22 provides for separate liability relief; and, when traditional and separate liability relief are not available,
23 subdivision (f) provides for equitable relief.

24 Except as otherwise provided in the innocent spouse statutes, an individual claiming

26 ¹⁰ R&TC section 18533, as amended by Stats. 1999, ch. 931, § 5, applies to any liability for tax arising after October 10,
27 1999, and any liability for tax arising on or before October 10, 1999, that remains unpaid as of that date. (Rev. & Tax. Code,
28 § 18533, subd. (h).) References to R&TC section 19006 for the 1999, 2000, and 2002 tax years are to former section 19006,
added by Laws 1993, ch. 31 effective June 15, 1993, operative January 1, 1994. References to R&TC section 19006 for the
2004 tax year are to current section 19006, amended by Laws 2003, ch. 62, effective January 1, 2004.

1 innocent spouse relief has the burden of establishing each statutory requirement. (*Stevens v.*
2 *Commissioner* (11th Cir. 1989) 872 F.2d 1499, 1504; *Appeal of Frederick and Charlotte Dillett*, 85-
3 SBE-012, Feb. 5, 1985.) Since the innocent spouse provisions are remedial in nature, they are
4 construed and applied liberally in favor of the individual claiming their benefits. (*Friedman v.*
5 *Commissioner* (2d Cir. 1995) 53 F.3d 523, 528-529.) However, respondent’s determinations are
6 generally presumed to be correct and an appellant generally bears the burden of proving error.
7 (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949)
8 89 Cal.App.2d 509, 514.)

9 Although subdivisions (b), (c), and (f) of R&TC section 18533 provide three potential
10 avenues for innocent spouse relief, neither subdivision (b) nor (c) is relevant to any of the tax years at
11 issue in this appeal because these subdivisions require the existence of a deficiency (rather than an
12 underpayment of reported tax) and none of the tax years at issue involve a deficiency.

13 Subdivision (f): Equitable Innocent Spouse Relief

14 R&TC section 18533, subdivision (f), gives respondent the discretion to provide
15 “equitable” innocent spouse relief from “any unpaid tax or any deficiency (or any portion of either),”
16 when a taxpayer does not qualify for innocent spouse relief under subdivisions (b) and (c). If a request
17 for equitable relief is coupled with a request for relief under subdivisions (b) and/or (c), the Board has
18 jurisdiction to determine if respondent’s failure to grant equitable innocent spouse relief amounts to an
19 abuse of discretion. (*Tyler-Griffis, supra.*) Respondent’s denial of equitable relief is respected unless
20 it is arbitrary, capricious, or without sound basis in fact. (*Jonson v. Commissioner* (2002) 118 T.C.
21 106; *Pacific First Federal Savings Bank v. Commissioner* (1993) 101 T.C. 117.) Federal Treasury
22 Regulations are applied in California innocent spouse cases to the extent that they do not conflict with
23 R&TC section 18533, or respondent’s regulations. (Rev. & Tax. Code, § 18533, subd. (g)(2).)

24 Threshold Conditions

25 Section 4.01 sets forth threshold conditions to the grant of equitable relief.¹¹ These
26 conditions require:

27 _____
28 ¹¹ Because Revenue Procedure 2003-61 is effective for innocent spouse relief requests filed on or after November 1, 2003,
it applies to the present appeal because appellant filed her innocent spouse request on October 28, 2008.

- 1 • the requesting spouse must have filed a joint return for the taxable year in which relief is
- 2 sought;
- 3 • relief is not available by traditional innocent spouse relief or by separate liability allocation;
- 4 • the ISR election is timely (two-years from first collection activity after July 22, 1998, for
- 5 federal ISR relief);
- 6 • no assets were transferred between the spouses as part of a fraudulent scheme;
- 7 • no disqualified assets¹² were transferred to the requesting spouse by the nonrequesting
- 8 spouse;
- 9 • the requesting spouse did not file the return with fraudulent intent.
- 10 • the income tax liability is attributable to an item of the nonrequesting spouse (unless, e.g.,
- 11 funds intended for payment of the tax liability were misappropriated by the nonrequesting
- 12 spouse; or where the requesting spouse establishes she was the victim of abuse prior to the
- 13 time the return was signed.)

14 Section 4.02

15 If the threshold conditions for equitable relief are met, Revenue Procedure 2003-61,
16 section 4.02 (hereafter section 4.02), provides that equitable relief will ordinarily be granted where
17 liability reported on a joint return is unpaid, if certain requirements are satisfied. Under section 4.02,
18 *all* of the following requirements must be satisfied:

- 19 • The requesting spouse is divorced, legally separated, or has lived apart from her spouse for
- 20 12 months prior to requesting relief.
- 21 • The requesting spouse shows that when she signed the return she had no knowledge or
- 22 reason to know that the tax would not be paid.
- 23 • The requesting spouse will suffer financial hardship if relief is not granted.

24 Section 4.03

25 If the threshold conditions for equitable relief are met, , but the individual requesting
26 relief does not meet the requirements under section 4.02, then relief may still be granted under section

27 _____
28 ¹² “Disqualified assets” are defined in IRC section 6015(c)(4)(B) as property transferred to the requesting spouse for the principal purpose of avoidance of tax or payment of tax.

1 Revenue Procedure 2003-61, section 4.03 (hereafter section 4.03). Section 4.03 provides a list of
2 factors that are relevant to whether equitable relief should be granted. Under this section, no single
3 factor is determinative in any particular case; all factors are to be considered and weighed
4 appropriately; and the list of factors is not intended to be exclusive. (See Rev. Proc. 2003-61,
5 § 4.03(2).) The factors are:

- 6 • marital status – whether the spouse requesting relief is separated (whether legally separated
7 or living apart) or divorced from the nonrequesting spouse;
- 8 • economic hardship – whether the requesting spouse would suffer economic hardship if
9 relief is not granted;¹³
- 10 • knowledge or reason to know –with respect to an underpayment (as here), whether the
11 requesting spouse knew or had reason to know that the other spouse would not pay the
12 stated tax;
- 13 • nonrequesting spouse’s legal obligation – whether the nonrequesting spouse has a legal
14 obligation to pay the outstanding tax liability pursuant to a divorce decree or settlement;
- 15 • significant benefit – whether the requesting spouse received a significant benefit from the
16 underpayment or the item giving rise to the deficiency;
- 17 • compliance with income tax laws – whether the requesting spouse has made a good faith
18 effort to comply with income tax laws in years following the years to which the request for
19 relief relates;
- 20 • abuse – whether the requesting spouse was the subject of abuse (but the absence of this
21 factor will not weigh against a grant of relief); and
- 22 • mental or physical health – whether the requesting spouse was in poor mental or physical
23 health when she signed the return or when she requested relief (but the absence of this
24 factor will not weigh against a grant of relief).

25
26
27 ¹³ Economic hardship would exist if satisfaction of the tax liability in whole or in part will cause the requesting spouse to
28 be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living
expenses will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do
not include the maintenance of an affluent or luxurious standard of living. (See Rev. Proc. 2003-61, §§ 4.03(2)(ii),
4.02(1)(c); Treas. Reg. § 301.6343-1(b)(4).)

1 (See Rev. Proc. 2003-61, § 4.03.)

2 R&TC section 19006

3 R&TC section 19006 provides an independent exception to the general rule that
4 spouses are jointly and severally liable for tax on the aggregate income stated on a joint return. As
5 relevant to this appeal, section 19006, subdivision (c), allows the FTB to revise a tax liability as to one
6 spouse from a joint return without regard to community property laws as follows:

- 7 • the liability of the spouse shall be in the same ratio to total tax, penalties, and interest due
8 for the taxable year as the income earned by or subject to the management and control of
9 the spouse is to total gross income reportable on the return;
- 10 • the relief cannot be for an amount below the amount actually paid on the liability prior to
11 the granting of relief, including credit from any other taxable year available for application
12 to the liability;
- 13 • the liability shall not be revised unless the spouse establishes that “he or she did not know
14 of, and had no reason to know of, the nonpayment at the time the return was filed. . . .
15 [R]eason to know means whether or not a reasonably prudent person would have had
16 reason to know of the nonpayment.” (Rev. & Tax. Code, § 19006, subd. (c)(1)(B)(2).);
- 17 • the FTB shall base its determination upon whether, under all of the facts and circumstances
18 surrounding the nonpayment, it would be inequitable to hold the requesting spouse liable
19 for the nonpayment. (Rev. & Tax. Code, § 19006, subd. (c)(1)(B)(4).); and
- 20 • the FTB's determination shall become final 30 days after the date when it mails notice to
21 both spouses, unless, within that 30-day period, one or both spouses file an appeal to the
22 Board pursuant to R&TC section 19045 with respect to the FTB's determination.¹⁴

23 Equitable Tolling of Statute of Limitations

24 The language of the statute of limitations is explicit and does not provide exceptions.
25 (*Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978.) In the case of a claim for refund,

26 _____
27 ¹⁴ R&TC section 19006, subdivision (c), further provides that it "shall apply to all taxable years subject to the provisions of
28 this part, but shall not apply to any taxable year which has been closed by a statute of limitations, res judicata, or
otherwise."

1 the Board has consistently held that the statute of limitations is explicit and must be strictly construed,
2 without exception. (*Appeal of Michael and Antha L. Avril, supra; Appeal of Earl and Marion*
3 *Matthiessen*, 85-SBE-77, July 30, 1985; *Appeal of James C. and Florence Meek*, 2006-SBE-001,
4 Mar. 28, 2006.) This Board has held that “general principles of equity may not override statutory
5 requirements for timely filing of tax refund claims.” (*Appeal of Earl W. and Patricia A. McFeaters*,
6 94-SBE-012, Nov. 30, 1994.) The Board has also considered the doctrine of equitable tolling and held
7 that, absent direction from the Legislature, the statute of limitations in R&TC section 19306 is not
8 subject to equitable tolling. (*Appeal of James C. and Florence Meek, supra, Appeal of Earl W. and*
9 *Patricia A. McFeaters, supra; see also United States v. Brockamp* (1997) 519 U.S. 347.) Federal courts
10 have stated that fixed deadlines may appear harsh because they can be missed, but the resulting
11 harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218,
12 222-223 [quoting *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S.
13 241, 249].)

14 R&TC section 19316 provides for equitable tolling of specified statutes of limitations
15 for financial disability; however, only periods of limitation covered in sections 19306, 19308, 19311,
16 19312, and 19313 are included. The period of limitation for filing a request for innocent spouse relief
17 pursuant to R&TC section 18533 is not included in the list of statutes of limitation that may be tolled
18 pursuant to R&TC section 19316.

19 Equitable Estoppel

20 To the extent that appellant may be arguing that respondent misled her by failing to
21 inform her of the applicable statute of limitations for filing a request for innocent spouse relief under
22 R&TC section 18533, this argument sounds in the nature of an equitable estoppel argument. The
23 doctrine of equitable estoppel is applied against the government only in rare and unusual circumstances,
24 when all of its elements are present, and its application is necessary to prevent manifest injustice.
25 (*Appeal of Richard R. and Diane K. Smith*, 91-SBE-005, Oct. 9, 1991; *California Cigarette*
26 *Concessions, Inc. v. City of Los Angeles* (1960) 53 Cal.2d 865; *United States Fidelity and Guaranty Co.*
27 *v. State Board of Equalization* (1956) 47 Cal.2d 384.) The four elements of equitable estoppel are:
28 (1) the party to be estopped [respondent] must be apprised of the facts; (2) respondent must intend that

1 its conduct shall be acted upon, or must so act that the party asserting the estoppel [appellant] has a right
2 to believe it was so intended; (3) appellant must be ignorant of the true state of the facts; and (4)
3 appellant must rely upon the conduct to his or her injury. (*Strong v. County of Santa Cruz* (1975) 15
4 Cal.3d 720, 725.)

5 Equitable estoppel may be applied against the government in order to prevent a grave
6 injustice, but the doctrine is inapplicable if it would result in the nullification of a strong rule of policy
7 adopted for the benefit of the public. (*Ibid.*) The Board has consistently refused to invoke the doctrine
8 of equitable estoppel when taxpayers have understated their tax liability on tax returns in alleged
9 reliance on erroneous information provided by FTB employees. (*Appeal of Richard R. and Diane K.*
10 *Smith, supra; Appeal of Harry H. and Alice P. Freer*, 84-SBE-127, Sept. 12, 1984. In addition,
11 respondent, an administrative agency, does not have the legal authority to interpret a statute in such a
12 way as to change its meaning or effect. (*Appeal of Melvin D. Collamore*, 72-SBE-031, Oct. 24, 1972.)
13 Also, informal publications do not constitute sources of authoritative law that trigger the doctrine of
14 equitable estoppel due to allegedly misleading statements contained therein. (*Appeal of Priscilla L.*
15 *Campbell*, 79-SBE-035, February 8, 1979.)

16 STAFF COMMENTS

17 Statute of Limitations

18 It is undisputed that appellant filed her request for innocent spouse relief on October 28,
19 2008. The Final Notice for tax years 1999 and 2000 issued April 7, 2003; the Final Notice for tax year
20 2002 issued February 19, 2004, and the Final Notice for 2004 issued on May 10, 2006. (*Id.*, p. 7.)
21 Thus, under the four-year limit set forth in subdivision (h)(2) of R&TC section 18533, it appears that
22 only appellant's 2004 election was timely, and as such, the Board may consider ISR only with respect
23 to the 2004 tax year.

24 Jurisdiction-Equitable Innocent Spouse Relief

25 Respondent argues that the Board lacks jurisdiction to review its denial of appellant's
26 request for relief under subdivision (f) for each of the tax years at issue, because appellant could not
27 have prevailed on an election for relief under (b) or (c). Respondent's interpretation appears to exceed
28 the plain language of R&TC section 18533, subdivision (e), which requires only that the individual

1 “making the election under (b) or (c)” may appeal the determination of the Franchise Tax Board of the
2 appropriate relief available to the individual under section 18533; that subdivision does not require
3 that the individual make the election and be entitled to relief under (b) or (c) in order to appeal to the
4 Board. Staff notes that appellant did not limit her election to any subdivision under section 18533, and
5 respondent did not limit its review of her request for each of the tax years at issue to any specific
6 subdivision of section 18533. Appellant filed a copy of FTB Form 705, Request for Innocent Spouse
7 Relief, which provides in Part III that respondent will review the request and determine whether the
8 claimant qualifies for relief under R&TC section 18533, subdivisions (b), (c), and (f), as well as
9 R&TC section 19006, subdivisions (b) & (c). Appellant's Statement in Support of Innocent Spouse
10 Relief Request attached to the FTB Form 705 merely states, "Please consider my request for Innocent
11 Spouse Relief." (*Id.*, Exhibit L, p. 2.) Staff also notes that in the NOA dated July 17, 2009,
12 respondent states that it "reviewed [appellant's] request for innocent spouse relief from the joint tax
13 liabilities for tax years 1999, 2000, 2002 and 2004, pursuant to Sections 18533(f) and 19006(c) of the
14 California Revenue and Taxation Code." The parties should be prepared to discuss whether appellant
15 elected relief for each of the tax years at issue under subdivisions (b) and (c), and thus meets the
16 requirements to appeal respondent's denial of relief to the Board pursuant to R&TC section 18533,
17 subdivision (e).

18 ISR under Subdivision (f) of R&TC Section 18533 (Equitable ISR)

19 Appellant must first show she meets the threshold requirements in section 4.01 and that
20 she is entitled to relief under either section 4.02 or 4.03.

21 Threshold Requirements

22 It appears appellant meets the first three requirements. With respect to the remaining
23 requirements, appellant should be prepared to discuss whether any assets were transferred between the
24 couple as part of a fraudulent scheme or whether her husband transferred any disqualified assets to her,
25 and whether the tax liabilities at issue are attributable to items of her husband, rather than herself.
26 Appellant may wish to provide statements under penalty of perjury from witnesses with personal
27 knowledge of her living circumstances attesting to her assets (and when received) from 2004 to the
28 present. With respect to whether the tax liabilities are attributable to items of appellant's husband or

1 appellant, staff notes the evidence (W-2 statements) in the record showing the disparity in appellant's
2 income as compared to her husband's income for 2004 (a ratio of \$69,647 versus \$31,751, or 69:31.)
3 (Resp. Opening Br., exhibit J, p. 3.) Further, appellant may wish to discuss whether she did not know,
4 and had no reason to know, that funds intended for the payment of tax were misappropriated by her
5 husband for his benefit. If so, equitable relief may be granted although the underpayment may be
6 attributable in part or in full to an item of appellant. (Revenue Procedure 2003-61, § 4.01(7).)

7 Section 4.02

8 To establish eligibility under this section, appellant must have been divorced, separated,
9 or living apart from her spouse for the 12 month period prior to her election for relief on
10 October 28, 2008. Here, while it appears that appellant asserts the circumstances of her relationship
11 with her spouse are *de facto* a separate living arrangement, it is undisputed that the spouses live
12 together in the same house with their children and that each pays specific expenses. With respect to
13 whether appellant has shown she would suffer economic hardship should ISR not be granted, appellant
14 has provided extensive financial documentation showing her income and expenses. It appears appellant
15 earns approximately \$3,000 per month and some of her monthly expenses are slightly less than \$3,000
16 per month. It does not appear, however, that appellant has completed her financial picture by
17 establishing the financial benefit she receives from her husband. Appellant should be prepared to
18 provide a complete list of income and expenses for her household, including the contributions made by
19 her spouse. For example, appellant should provide the monthly rent information for her house, as well
20 as any other household bills her spouse pays.¹⁵

21 Section 4.03

22 Should the Board determine that appellant satisfies the threshold requirements of section
23 4.01 but does not qualify for relief under section 4.02, she may still qualify for relief under section
24 4.03. With respect to whether appellant knew or had reason to know that her spouse would not pay
25 their reported tax liability, appellant may wish to be prepared to discuss her level of education, her
26 occupations prior to and during the marriage, such as when she worked for the British Embassy in
27

28 ¹⁵ Exhibits should be submitted to: Claudia Madrigal, Board of Equalization, Board Proceedings Division, P. O. Box
942879 MIC: 80, Sacramento, CA 94279-0080.

1 Washington, D.C., her involvement in household financial matters, and her business or financial
2 expertise.

3 Appellant has also attempted to show the financial strain she has experienced prior to
4 and after her husband filed for bankruptcy; she may wish to provide more information demonstrating
5 the economic hardship she would endure should relief not be granted, such as statements under penalty
6 of perjury from witnesses with personal knowledge of her living circumstances that can attest to her
7 standard of living. Appellant should be prepared to address her self-reported income that has steadily
8 increased from 2005 to 2008 (\$36,982; \$44,713; \$51,047; \$58,651), and demonstrate economic
9 hardship despite this (in conjunction with the contributions to the household made by her spouse). It
10 appears that appellant has made a good faith effort to comply with income tax laws in the tax years
11 following the tax years at issue; since 2005 she has filed married filing separately tax returns.
12 However, respondent notes that appellant may have failed to report her share of community property
13 income on those returns; respondent should be prepared to discuss this in more detail.

14 The parties may wish to discuss whether appellant has shown that her husband verbally,
15 emotionally or psychologically abused her. In her reply brief, appellant appears to suggest that her
16 marriage was abusive due to her husband's erratic lifestyle and amoral behavior, open humiliation and
17 verbal abuse, as well as the duress due to her husband's abrupt moves and financial instability and her
18 fear of deportation. Respondent argues there are insufficient details about these allegations and
19 appellant failed to provide sufficient information that would elevate the alleged duress to abuse.
20 Appellant should consider presenting evidence of such abuse, such as the declarations under penalty of
21 perjury by witness with knowledge of such abuse.

22 R&TC Section 19006, subdivision (c)

23 Staff notes that the FTB Form 705 that appellant completed, signed and filed with
24 respondent specifically provides that respondent will determine whether appellant qualifies for relief
25 under R&TC section 19006, subdivision (c), in addition to subdivisions (b), (c), (f), and (i) of R&TC
26 section 18533. (Resp. Opening Br., exhibit L.) Applying R&TC section 19006, subdivision (c), to
27 each of the tax years at issue, the parties should be prepared to discuss whether, under all of the facts
28 and circumstances surrounding the nonpayment of the tax liabilities, it would be inequitable to hold

1 appellant liable for the nonpayment. For purposes of R&TC section 19006, subdivision (c)(2),
2 appellant should be prepared to discuss whether she did not know of, and had no reason to know of,
3 the nonpayment of the tax liability for each of the tax years at the time the joint return was filed.
4 Specifically, appellant should discuss whether she is entitled to a revision of tax liability for any of the
5 tax years at issue in light of the facts that in October 2004 her husband filed bankruptcy and
6 respondent pursued collection action with respect to each of the tax years at issue. As discussed
7 above, respondent claims it would have sent notices to appellant and her husband every 45 days
8 concerning the outstanding tax liabilities, including a Past Due Notice, possibly a Delinquent Notice,
9 and a Final Notice, and its records show that a Final Notice for tax years 1999 and 2000 was mailed on
10 April 7, 2003, a Final Notice for tax year 2002 was mailed on February 19, 2004, and a Final Notice
11 for tax year 2004 was mailed on May 10, 2006.

12 In her reply brief, appellant lists specific ratios of earnings for each of the tax years at
13 issue. It appears that she may be addressing the provision in R&TC section 19006, subdivision
14 (c)(1)(A), which states, "The liability of the spouse for the tax, penalties, and interest due for the table
15 year shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income
16 earned by or subject to the management and control of the spouse is to total gross income reportable
17 on the return." Appellant may want to be prepared to discuss the ratios listed in her reply brief, how
18 she calculated them, and how they may apply to this provision of R&TC section 19006. Respondent
19 may also wish to discuss the ratio requirements set forth in R&TC section 19006, subdivision c)(1)(A),
20 as they apply to this appeal.

21 The parties should also be prepared to address whether subdivision (c) of R&TC
22 section 19006 is applicable to the tax years at issue in this appeal, or whether this subdivision does not
23 apply because some or all of the tax years at issue have been closed by a statute of limitations, or
24 otherwise, pursuant to R&TC section 19006, subdivision (c)(5).

25 Equitable Tolling of Statute of Limitations

26 It appears that appellant does not qualify for the equitable tolling of the applicable
27 statute of limitations for purposes of R&TC section 18533. As discussed above, the period of
28 limitation for filing a request for innocent spouse relief pursuant to R&TC section 18533 is not

1 included in the list of statutes of limitation that may be tolled pursuant to R&TC section 19316.
2 Furthermore, appellant concedes that she did not suffer from any mental or physical health condition
3 during the relevant time periods and therefore she was not “financially disabled.” In addition, she
4 could not be “financially disabled” because she had a spouse legally authorized to act on her behalf in
5 financial matters.

6 Equitable Estoppel

7 Appellant offers a number of explanations regarding her failure to file a timely request
8 for innocent spouse relief for each of the tax years at issue, none of which appear to support a claim of
9 equitable estoppel. First, estoppel may only be granted in situations of clear grave injustice. In the
10 case at hand, appellant provides no evidence that respondent provided false information with respect to
11 her right to file a request for relief, making it unclear whether an injustice ever occurred. Second, a
12 party claiming estoppel must also show that she detrimentally relied on the party to be estopped. It
13 appears that here appellant did not rely on respondent’s representations.

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