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

13 In the Matter of the Appeals of:) **HEARING SUMMARY³**
 14)
 15 **JOHN HUGO¹**) **PERSONAL INCOME TAX APPEAL**
 16)
 17 **FORMER SPOUSE DISPUTING RELIEF**) Case No. 209495
 18)
 19 **LINDA S. WILLIAMS²**)
 20)
 21 **FORMER SPOUSE GRANTED RELIEF**) Case No. 313247
 22)

	<u>Year</u>	<u>Amount of Relief Granted</u>
	2000	\$1,451.81 ⁴
	///	

23 ¹ Mr. Hugo lives in Nevada County, California.

24 ² Ms. Williams lives in Placer County, California.

25 ³ This appeal was postponed from the February 28, 2008 and February 25, 2009 hearing calendars in anticipation of a
 26 decision from the U.S. Tax Court case on Ms. Williams' federal request for innocent spouse relief. The appeal was
 27 rescheduled to the April 15, 2009 hearing calendar. Prior to that date, the FTB provided a copy of an order, dated
 28 February 18, 2009, from the U.S. Tax Court granting Ms. Williams innocent spouse relief under Internal Revenue Code
 (IRC) section 6015(f) for 2000 (which order is included in the file as an FTB exhibit). The appeal was then postponed from
 the April 15, 2009 hearing calendar to the July 21 - 22, 2009 calendar to allow Mr. Hugo time to attend to personal medical
 issues. Although Mr. Hugo did not respond to a hearing notice, Ms. Williams requested a hearing and responded to the
 hearing notice; accordingly, the appeal was calendared for a hearing.

⁴ This is comprised of \$683.37 in tax, a late payment penalty of \$338.84, collection costs of \$114.00 and \$315.60 in interest
 assessed as of the date of respondent's Notice of Action (NOA).

1 Representing the Parties:

2 For Spouse Disputing Relief: John Hugo

3 For Spouse Granted Relief: Linda S. Williams

4 For Franchise Tax Board: Mark McEvelly, Tax Counsel III

5
6 QUESTION: Whether appellant John Hugo has shown that respondent erred when it determined that
7 appellant Linda Williams was entitled to innocent spouse relief for the 2000 tax year.

8 HEARING SUMMARY

9 Background

10 John Hugo and Linda S. Williams were married on October 1, 1993. During their
11 marriage, the couple had one child, born on July 13, 1998. The couple separated on June 15, 2001. Mr.
12 Hugo filed a petition for dissolution of the marriage on May 29, 2001. (Williams Supp. Br., Second
13 Appellate District Decision, p. 2.) Their marital status was terminated on October 1, 2004. (*Id.*, p. 9.)
14 As part of the divorce proceedings, the trial court determined that spousal support for was not necessary
15 for either party. (Williams Br., attached Statement of Decision, p. 2.) The court ordered Mr. Hugo to
16 pay past child support of \$33,555.40 to Ms. Williams, but gave him credit for payment of travel costs of
17 \$4609.00. (*Ibid.*) After evaluation of each party's income, the court ordered Mr. Hugo to pay \$1,480 in
18 child support to Ms. Williams.⁵ (*Id.*, p. 3.) The court determined that Mr. Hugo had custody of their
19 son 40 percent of the time.

20 In addition, the trial court found that the family home on Chattanooga was community
21 property because it had been transmuted from being Mr. Hugo's separate property to community
22 property on December 3, 1998, when Mr. Hugo executed and delivered a grant deed to Ms. Williams.
23 (*Id.*, pp. 7-8.) The court determined that Mr. Hugo was to pay Ms. Williams \$73,333 to reflect various
24 charges and credits. (*Id.*, p. 10.) Mr. Hugo disagreed with the findings of the trial court and appealed on
25 April 8, 2005.

26 The Court of Appeals for the Second District (appellate court) sustained the trial court's
27

28 ⁵ The court also ordered Mr. Hugo to reimburse Ms. Williams for half of monthly insurance premiums for their son.

1 determination that the Chattanooga property had been transmuted from Mr. Hugo's separate property to
2 community property held as tenants in common. (Williams Supp. Br., see Second Appellate District,
3 judgment, p. 2.) The appellate court rejected Mr. Hugo's claim that an agreement signed on December
4 7, 1998 limited Ms. Williams's interest in the family home to eight percent. (*Id.*, p. 2.) The appellate
5 court specified that Mr. Williams had transmuted the property to community property when he executed
6 a grant deed on December 3, 1998 in conjunction with refinancing the property. (*Id.*, p. 4.) The
7 appellate court found that Ms. Williams had been given ownership in the property in exchange for Ms.
8 Williams's signature and assumption of liability on a loan from Downey Savings, secured by the
9 property and Ms. Williams's income. (*Id.*, pp. 12-16.) The appellate court sustained all other aspects of
10 the trial court's judgment, including child custody and support orders, allocation of credit obligations,
11 and division of assets.

12 2000 Tax Return

13 Appellants filed a California Form 540 Personal Income Tax Return for 2000 claiming a
14 married filing joint filing status. (Resp. Br., exhibit A.) On their return, they reported California
15 Adjusted Gross Income (AGI) of \$215,744.⁶ (*Id.* at line 17.) On the return, appellants claimed
16 deductions totaling \$97,793 resulting in taxable income of \$117,951. (*Id.* at line 19.) After application
17 of an exemption credit, appellants calculated a tax liability of \$7,075. (*Id.*, at lines 20-24.) Withholding
18 of \$4,600 on wages paid to Ms. Williams was claimed on the return resulting in total tax due of \$2,475.
19 (*Id.*, at lines 38-50.) No payment was submitted with the return. (Resp. Br., p. 1.)

20 Ms. Williams submitted a copy of federal Form 8857 to respondent requesting equitable
21 innocent spouse relief. (Resp. Br., exhibit B.) Respondent then notified Mr. Hugo of Ms. Williams
22 request for innocent spouse relief and invited him to provide any information relevant to its
23 determination of the matter. (Resp. Br., exhibit D.) At approximately the same time, respondent
24 acknowledged Ms. Williams's request, informed her of the factors considered in making a determination
25 to grant innocent spouse relief, and requested additional documentation to support her request. (Resp.
26 Br., exhibit F.) In a letter dated June 6, 2002, Ms. Williams specifically requested relief under "Section
27

28 ⁶ This was comprised primarily of the net profit from Mr. Hugo's business and Ms. Williams wages of \$96,386.

1 18533(f) – Equitable Relief’ and provided additional information pursuant to respondent’s request.
2 (Resp Br., exhibit G.)

3 Mr. Hugo stated in his reply to respondent’s request that he did not believe Ms. Williams
4 should be granted relief as an innocent spouse because she was aware of both the state and federal tax
5 liabilities when the returns were signed and that she benefited from the non-payment of tax because the
6 funds were used to pay the mortgage and other expenses. (Resp. Br., exhibit E.) In her letter dated
7 June 6, 2002, Ms. Williams argued that she should be granted relief because the underpayment of tax
8 was attributable to Mr. Hugo because he had failed to make any estimated tax payments while her taxes
9 were regularly withheld by her employer. (Resp. Br., exhibit G.) Ms. Williams further stated that at the
10 time the returns were filed Mr. Hugo had money available in his personal accounts to pay the tax. Ms.
11 Williams also argued that she received no benefit from the non-payment of tax, that she was ignorant of
12 her husband’s failure to make estimated tax payments, that Mr. Hugo admitted his liability for the
13 underpayment of tax to her, and that she and her minor child will suffer undue hardship if she has to pay
14 the liability. (*Ibid.*)

15 Later, Ms. Williams submitted mutual fund statements to show that community funds
16 maintained in Mr. Hugo’s name were sufficient to pay the self assessed tax liability at the time the 2000
17 tax returns were filed. (Resp. Br., exhibit H.) Based on the information received, respondent granted
18 Ms. Williams relief from liability for the underpaid tax under Revenue and Taxation Code, section
19 18533, subdivision (f). On December 24, 2002, respondent issued a Notice of Action to each of the
20 appellants informing them of its decision. (Resp. Br., exhibits I and J.) Mr. Hugo filed a timely appeal.

21 Subsequently, Ms. Williams submitted additional information to respondent to show that
22 Mr. Hugo had sufficient funds at the time of filing the 2000 return to pay the self-assessed liability.
23 (Resp. Br., exhibit L.) Ms. Williams provided a copy of correspondence, which she indicated was
24 handwritten by Mr. Hugo, showing calculations indicating that the state tax due was his liability. (Resp.
25 Br., exhibit L, pp. 4-5.) Another submission was the recorded sale of his tenant in common interest in
26 the family home to a third party (Steve Luczo) for \$175,000. (Resp. Br., exhibit L, p. 6.) Ms. Williams
27 also reiterated to respondent that Mr. Hugo had never made court mandated child support payments and
28 the payment that she had received was the result of a levy upon his bank account. (Resp. Br., exhibit L,

1 p. 3.)

2 Contentions

3 Mr. Hugo contends that his former spouse should not be granted relief as an innocent
4 spouse. Mr. Hugo argues that Ms. Williams was aware of both the state and federal tax balance due
5 amounts. (App. Br., p. 1.) Mr. Hugo states that he lost his job in February 2001 and income he
6 anticipated receiving never materialized. Mr. Hugo asserts that Ms. Williams also lost her job in May
7 2001 and neither was able to pay state or federal tax liabilities. (App. Br., p. 2.)

8 Mr. Hugo asserts that the Internal Revenue Service (IRS) denied Ms. Williams request
9 for innocent spouse relief. (*Ibid.*) Mr. Hugo argues that the IRS denied innocent spouse relief because
10 Ms. Williams knew the tax would not be paid and because she had compliance problems in 1993 and
11 1994. (App. Supp. Info., dated March 5, 2003, attachment 1, p. 1.) Mr. Hugo contends he never agreed
12 to pay the 2000 tax liability from separate funds because they are jointly responsible for the tax. He
13 made the handwritten calculation to show her, based on income, whose income generated what tax
14 amounts, but he always believed the community was responsible for payment, not the individual.

15 Mr. Hugo argues that his wife has earned sufficient income that she will not suffer undue
16 hardship if she is not granted innocent spouse relief. (App. Br., p. 5.) Mr. Hugo contends Ms. Williams
17 had \$173,000 in her bank accounts in 2002 that she had received from her parents and that she had
18 received \$30,000 in salary. (Hugo Supp. Info., dated March 5, 2003, attachment 1, p. 9.) He argues that
19 the fact she paid attorneys more than \$50,000 in 2002 supports his contention that she will not suffer
20 economic hardship. (*Ibid.*) In addition, Mr. Hugo contends that Ms. Williams will inherit a substantial
21 amount of money from her parents and that she has received advances out of this inheritance, further
22 supporting a finding that she will not suffer undue economic hardship if she is not granted innocent
23 spouse relief. (*Ibid.*)

24 Mr. Hugo argues that he paid his share of the underpaid tax when respondent levied his
25 2001 tax refund in the amount of \$1,791.63 to pay the 2000 tax liability. (App. Br., p. 6.) Mr. Hugo
26 contends that Ms. Williams has benefited from his ownership of real estate because she can take
27 mortgage interest expense deductions even though she has not made a mortgage payment or paid real
28 estate taxes as required by an agreement executed December 7, 1998. (*Ibid.*)

1 Ms. Williams contends that respondent properly granted her relief as an innocent spouse.
2 Ms. Williams argues that at the time the couple filed their joint return, she was unaware that Mr. Hugo
3 had not made any estimated tax payments on his self-employment income. Ms. Williams asserts that
4 Mr. Hugo received loan proceeds of \$100,000 in January 2001, prior to filing the 2000 return, and that
5 she believed he would use the proceeds to pay the balance due with the return.

6 In her appeal, Ms. Williams contends that the IRS determination is not yet final and that
7 she has appealed the initial IRS denial. Ms. Williams argues that payment of the liability would create a
8 hardship because she is the sole source of support for the couple's son. Ms. Williams asserts that Mr.
9 Hugo has failed to pay court ordered child support and has also failed to pay her any of her share of the
10 community assets. Ms. Williams further states that although the trial court ordered Mr. Williams to pay
11 \$44,384 to her, she has not received any of these funds.

12 Ms. Williams states that the family home on Chattanooga was originally owned by Mr.
13 Hugo as his separate property. During their marriage, the couple wanted to refinance the home. As part
14 of that refinancing Ms. Williams became a co-obligor to a deed of trust in favor of Downey savings.
15 (Williams Br., p. 3.) Ms. Williams contends that the family law court determined that her community
16 property interest in the family home was about 30 percent and the judge ordered that Mr. Hugo either
17 buy out Ms. Williams' interest or that the property be placed on the market. (Williams Br., p. 3.)

18 Ms. Williams also disputes Mr. Hugo's allegations that she has had tax compliance
19 problems in the past. Ms Williams contends that Mr. Hugo's bankruptcy case culminated after the
20 bankruptcy judge concluded that Mr. Hugo had not been forthright. (Williams Br., pp. 4, 6.)

21 Respondent contends this Board may not have jurisdiction to review its decision to grant
22 equitable innocent spouse relief in this case. Respondent argues that in *Commissioner v. Ewing* (9th Cir.
23 2005) 439 F.3d 1009 (*Ewing*), the Court vacated a decision by the United States Tax Court, concluding
24 it did not have jurisdiction to make decisions denying equitable innocent spouse relief where there was
25 no deficiency of tax issued by the Commissioner. (Resp. Supp. Br., p. 3.) Respondent contends that
26 *Ewing* is directly applicable here because respondent issued no deficiency of tax in this case and Ms.
27 Williams's request for innocent spouse relief was made and granted solely under R&TC section 18533,
28 subdivision (f).

1 However, if this Board determines that it has jurisdiction, then respondent contends that
2 Mr. Hugo has not shown error in respondent's determination to grant innocent spouse relief to Ms.
3 William under R&TC section 18533, subdivision (f). Respondent argues that it properly determined that
4 Ms. Williams met the threshold requirements to be eligible for relief set forth in section 4.01 of Revenue
5 Procedure 2003-61 because:

- 6 1. A joint 2000 return was filed.
- 7 2. Relief was not available under R&TC 18533, subdivisions (b) or (c).
- 8 3. The request for relief was timely.
- 9 4. The liability remains unpaid.
- 10 5. There was no evidence that assets were transferred between the spouses as part of a
11 fraudulent scheme.
- 12 6. There were no disqualified assets transferred by Ms. Williams.
- 13 7. Ms. Williams did not file the 2000 return with fraudulent intent.

14 Respondent next determined that, although Ms. Williams was not eligible for relief under section 4.02 of
15 Revenue Procedure 2003-61, she was entitled to relief under section 4.03. Respondent specifically
16 found that, taking into account all the facts and circumstances, it would be inequitable to hold Ms.
17 Williams liable for the unpaid portion of the 2000 tax liability. Respondent specifically found that Ms.
18 Williams would suffer economic hardship if she were required to pay the liability especially in light of
19 the fact that Mr. Hugo has not made child support payments. Respondent contends that Mr. Hugo has
20 not provided evidence to the contrary and that production of evidence of payment would require little
21 effort. Furthermore, respondent was not persuaded by Mr. Hugo's assertion that Ms. Williams's
22 continued salary of \$2,000 per month and her "over \$1,000,000 of legal expenses" demonstrated a lack
23 of economic hardship. Respondent notes that Mr. Hugo's failure to pay child support is, at least in part,
24 the source of such legal bills.

25 Respondent argues that, as to knowledge, Ms. Williams has provided statements that she
26 had no information that Mr. Hugo had failed to make required estimated tax payments. Respondent
27 contends Ms. Williams has shown that Mr. Hugo had the funds available to him to pay the liability
28 either from the \$100,000 that he borrowed from Mr. Luczo or from Mr. Hugo's mutual funds.

1 Respondent determined that the underpayment is attributable to Mr. Hugo because while Ms. Williams
2 earned 45 percent of the couple's joint AGI her withholding paid 65 percent of the reported tax.
3 Respondent reviewed the Statement of Decision submitted by Mr. Hugo (a complete copy was
4 submitted by Ms. Williams) and found it informative as to Mr. Hugo's credibility with respect to his
5 financial situation. Respondent argues that the court found Mr. Hugo to have been inconsistent with
6 respect to his financial situation in the divorce proceeding. Respondent contends that there is support
7 for the conclusion that Mr. Hugo has not been forthright in his revelations regarding financial matters
8 and that Ms. Williams is in a substantially inferior position as far as finances are concerned.

9 Respondent found no evidence that Ms. Williams derived a significant benefit above
10 normal support from the untaxed income. Finally, respondent reviewed Ms. Williams's filing history
11 and found no evidence that she had prior compliance problems. Respondent further contends that,
12 although Mr. Hugo argues that community property laws result in the underpayment being attributed to
13 both parties to the return, there is a legal proscription against the application of community property
14 laws when determining innocent spouse relief.

15 Applicable Law

16 A. *Jurisdiction Over R&TC section 18522, subdivision (f) Claims*

17 There are three types of innocent spouse relief under section 18533: traditional relief
18 under subdivision (b), separate liability election under subdivision (c), and equitable relief under
19 subdivision (f). The administrative appeal rights for California innocent spouse cases are set forth in
20 subdivision (e) of section 18533. When a California statute is substantially similar to a federal statute,
21 federal law interpreting the federal statute may be considered highly persuasive. (*Douglas v. State of*
22 *California* (1942) 48 Cal.App.2d 835.) In particular, federal precedent is applied extensively in
23 California innocent spouse cases. (Rev. & Tax. Code, §18533, subd. (g)(2).)

24 Internal Revenue Code section 6015 governs innocent spouse relief at the federal level
25 and is structured similar to section 18533. IRC section 6015 contains provisions for traditional relief in
26 subsection (b), separate liability election in subsection (c), equitable relief in subsection (f), and appeal
27 rights in subsection (e).

28 In *Ewing*, the Ninth Circuit focused on the language in the current version of IRC section

1 6015(e)(1) that requires that a deficiency be asserted. In *Ewing*, the taxpayer had requested equitable
2 relief under IRC section 6015(f) and, because the liability at issue had been self-assessed on the joint
3 return, there was no “deficiency” asserted. The tax court held that it had jurisdiction to hear the appeal.
4 The Ninth Circuit reversed, noting that the plain language of section 6015(e)(1) requires the assertion of
5 a deficiency. The court therefore stated: “We hold that the tax court erred in concluding that it had
6 jurisdiction over *Ewing*’s petition because no deficiency had been asserted.” (*Ewing, supra*, 439 F.3d at
7 p. 1014.)

8 California’s administrative appeal language differs from the current version of IRC
9 section 6015(e), under which *Ewing* was decided. Section 18533, subdivision (e)(1)(A)(iii), states:

10
11 The individual making the election under subdivision (b) or (c) may appeal the
12 determination of the Franchise Tax Board of the appropriate relief available to the
13 individual under this section if that appeal is filed [within 30 days of the notice of the
14 Franchise Tax Board’s determination] and the appeal shall be treated as an appeal to the
15 Board under Section 19045. Notwithstanding the preceding sentence, the individual
16 making the election under subdivision (b) or (c) may appeal to the board at any time after
17 the date that is six months after the date the election is filed with the Franchise Tax Board
18 and before the close of the [foregoing 30-day] period. (Emphasis added.)

19 To the extent there are relevant differences in the statutory language, it is California’s language in
20 section 18533, not federal authority, which governs this Board’s jurisdiction to hear requests for
21 equitable relief under subdivision (f).

22 The appeal provision in section 18533 first sets forth who may file the appeal.
23 Subdivision (e)(1)(A)(iii) provides a right of appeal to “[t]he individual making the election under
24 subdivision (b) or (c)” Unlike the current version of IRC section 6015(e), California’s appeal
25 provision contains no requirement that there be a deficiency. Thus, we find *Ewing*, which focused on
26 the requirement that there be a deficiency, to be of only limited use in interpreting California’s appeal
27 provision.

28 The appeal provision in section 18533 then sets forth what is at issue in the appeal.
Subdivision (e)(1)(A)(iii) states that the subject of the appeal is “. . . the determination of the Franchise
Tax Board of the appropriate relief available to the individual under this section” The subject
matter of the appeal is not limited to respondent’s determination under subdivision (b) and/or (c).
Rather, the scope of the appeal includes the relief available “under this section,” which includes

1 subdivisions (b), (c), and (f). In *Appeal of Patricia Tyler-Griffis*, (2006-SBE-004) decided on
2 December 12, 2006 (*Tyler-Griffis*), this Board concluded that it had jurisdiction to review respondent's
3 denial of equitable relief under subdivision (f) if the request for relief under subdivision (f) was coupled
4 with a request for relief under subdivision (b) and/or (c). If the request for relief under subdivision (f)
5 stands alone, however, this Board found it would not have jurisdiction to review respondent's denial of
6 equitable relief.

7 B. *Innocent Spouse Relief*

8 Under R&TC section 19006, subdivision (b), a joint return filed by a husband and wife
9 results in joint and several tax liability; thus, respondent is entitled to assert the entire tax liability
10 against either party. The innocent spouse provisions of R&TC section 18533 allow an individual who
11 files a joint return to be relieved of all or a portion of that joint and several liability. When a California
12 statute is substantially identical to a federal statute (as R&TC section 18533 is to IRC section 6015),
13 federal law interpreting the federal statute is considered highly persuasive. (*Douglas v. State of*
14 *California* (1942) 48 Cal.App.2d 835.) In particular, federal precedent is applied in California innocent
15 spouse cases. (*Appeal of Patricia Tyler-Griffis, supra.*; see also Rev. & Tax. Code, §18533, subd.
16 (g)(2).)

17 The "Taxpayer's Bill of Rights Act of 1999" amended R&TC section 18533 in order to
18 expand the availability of innocent spouse relief. Among other things, the Act conformed the provisions
19 of R&TC section 18533 to federal provisions and provided an avenue by which the FTB may award
20 equitable relief (which equitable relief provision is found in subdivision (f) of R&TC section 18533).
21 The revisions to R&TC section 18533 are generally applicable to any tax liability arising after, or
22 remaining unpaid after, the October 10, 1999 effective date of the Act.

23 Although subdivisions (b), (c) and (f) of R&TC section 18533 provide three potential
24 avenues for innocent spouse relief only subdivision (f) is relevant here because the liability is caused by
25 underpayment of a self assessed tax liability.

26 C. *Subdivision (f): Equitable Innocent Spouse Relief*

27 R&TC section 18533, subdivision (f), gives respondent the discretion to provide
28 "equitable" innocent spouse relief from "any unpaid tax or any deficiency (or any portion of either),"

1 when a taxpayer does not qualify for innocent spouse relief under subdivisions (b) and (c). If a request
2 for equitable relief is coupled with a request for relief under subdivisions (b) and/or (c), the Board has
3 jurisdiction to determine if respondent's failure to grant equitable innocent spouse relief amounts to an
4 abuse of discretion. (*Appeal of Patricia Tyler-Griffis, supra.*) Respondent's denial of equitable relief is
5 respected unless it is arbitrary, capricious, or without sound basis in fact. (*Jonson v. Commissioner,*
6 (2002) 118 T.C. 106; *Pacific First Federal Savings Bank v. Commissioner* (1993) 101 T.C. 117.)

7 Section 4.01 of Revenue Procedure 2003-61 sets forth general conditions to the grant of
8 equitable relief. Among other things, these conditions generally require that the income tax liability be
9 attributable to an item of the nonrequesting spouse.⁷ The general conditions also require that relief be
10 claimed within two years of the date of the first collection activities against the claiming spouse.

11 If the general conditions for equitable relief are met, Revenue Procedure 2003-61 sets
12 forth a nonexclusive list of factors that are relevant to whether equitable relief should be granted. No
13 single factor is to be determinative in any particular case; all factors are to be considered and weighed
14 appropriately; the list of factors is not intended to be exclusive. (See Rev. Proc. 2003-61, 2003-2 C.B.
15 296, § 4.03(2).) That list includes:

- 16 • Marital status – whether the spouse requesting relief is legally separated or
17 divorced from the nonrequesting spouse;
- 18 • Economic hardship – whether the requesting spouse would suffer economic
19 hardship if relief is not granted;
- 20 • Knowledge or reason to know – with respect to a deficiency, whether the
21 requesting spouse knew or should have known of the item giving rise to the
22 deficiency and, with respect to an underpayment, whether the requesting spouse
23 knew or had reason to know that the other spouse would not pay the stated tax;
- 24 • Significant benefit – whether the requesting spouse received a significant benefit

25
26
27 ⁷ This general rule will not apply if one of four exceptions applies: (i) the item is attributable to the requesting spouse solely
28 due to the operation of community property laws, (ii) the item relates to an asset that is only nominally owned by the
requesting spouse, (iii) funds intended for the payment of tax were misappropriated by the nonrequesting spouse for the
requesting spouse's benefit or (iv) the requesting spouse establishes that she was the victim of abuse that caused her not to
challenge the treatment of any items on the return for fear of retaliation.

1 from the underpayment or the item giving rise to the deficiency;

- 2 • Nonrequesting spouse's legal obligation – whether the nonrequesting spouse has a
- 3 legal obligation to pay the outstanding tax liability pursuant to a divorce decree or
- 4 settlement;
- 5 • Compliance with income tax laws – whether the requesting spouse has made a
- 6 good faith effort to comply with income tax laws in years following the years to
- 7 which the request for relief relates;
- 8 • Abuse – whether the requesting spouse was the subject of abuse (but the absence
- 9 of this factor will not weigh against a grant of relief); and
- 10 • Mental or physical health – whether the requesting spouse was in poor mental or
- 11 physical health when she signed the return or when she requested relief (but the
- 12 absence of this factor will not weigh against a grant of relief).

13 (See Rev. Proc. 2003-61, 2003-2 C.B. 296, § 4.03(2)(a).)

14 STAFF COMMENTS

15 Jurisdiction

16 Because Ms. William requested equitable relief innocent spouse relief using federal
17 Form 8857 and checking that her request was for equitable relief, it appears to staff that the Board may
18 not have jurisdiction to consider this appeal from a grant of equitable relief pursuant to its decision in
19 *Tyler-Griffis*. Thus it appears that Mr. Hugo may not have the ability to appeal respondent's
20 determination. At the hearing, all parties should be prepared to discuss whether this Board has the
21 jurisdiction to review respondent's determination to grant Ms. Williams relief. Staff notes that
22 respondent provided its notice granting relief to Ms. Williams stating that the decision could be appealed
23 to the Board on December 24, 2002, prior to the Board's decision in *Tyler-Griffis*. If this Board
24 determines that it lacks jurisdiction, there is no need to address the substantive issues discussed below.

25 Discussion of Equitable Relief

26 In analyzing respondent's determination to grant Ms. Williams relief under R&TC
27 section, 18533, subdivision (f), staff notes that, although the innocent spouse provisions are remedial
28 provisions intended to be construed liberally (see *Friedman v. Commissioner* (2d Cir. 1995) 53 F.3d

1 523), respondent's determinations are presumed correct, and appellant bears the burden of proving error.
2 (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89
3 Cal.App.2d 509.) In the absence of uncontradicted, credible, competent, and relevant evidence showing
4 that respondent's determinations are incorrect, they must be upheld. (*Appeal of Oscar D. and Agatha E.*
5 *Seltzer*, 80-SBE-154, Nov. 18, 1980.) In addition, as noted in Applicable Law, respondent's
6 determination under subsection (f) is respected unless it represents an abuse of discretion and is
7 arbitrary, capricious, or without sound basis in fact. (*Appeal of Patricia Tyler-Griffis, supra; Jonson v.*
8 *Commissioner, supra; Pacific First Federal Savings Bank v. Commissioner, supra.*) The foregoing
9 standards of review place a burden on Mr. Hugo to explain how the FTB erred in determining that Ms.
10 Williams is entitled to innocent spouse relief and provide documentation that verifies his explanation.

11 Not all of the equitable factors listed in section 4.03 are relevant here. Staff will discuss
12 the relevant factors raised by this case.

13 Marital Status

14 Appellants were legally separated when Ms. Williams filed her request for innocent
15 spouse relief and they are now divorced. This factor is positive.

16 Economic Hardship

17 Here, economic hardship is defined as whether the liability will cause Ms. Williams to be
18 unable to pay "reasonable basic living expenses" (See Treas. Regs. § 301.6343-1(b)(4).) The parties do
19 not agree on this issue. Although appellants jointly own a home in Pacific Palisades, it does not appear
20 to staff that the home has been sold and that it may have suffered damage, which will delay the sale and
21 distribution of any proceeds from that sale. It appears to staff that Ms. Williams has physical custody of
22 the couple's son at least 60 percent of the time and provides health insurance for the child. It also
23 appears to staff that although the appellate court confirmed that Ms. Williams is entitled to child support
24 from Mr. Hugo, none has been paid voluntarily. Ms. Williams states that she earns a salary of \$2,000
25 per month and lives with her parents. It appears to staff that, without being required to pay the 2001 tax
26 liability, Ms. Williams is already having difficulty paying for reasonable basic living expenses. Mr.
27 Hugo has maintained that Ms. Williams would not suffer any economic hardship because she has
28 incurred legal bills in excess of \$1,000,000, her parents are wealthy, and she has a future inheritance. It

1 appears that Mr. Hugo has yet to present documentary evidence to show Ms. Williams would not suffer
2 economic hardship. The fact that Ms. Williams has incurred legal bills does not lead to the conclusion
3 that she has the funds to pay them. In addition, it appears to staff that the appeals filed by Mr. Hugo in
4 the divorce proceedings may have contributed to the large legal bills that he references. Staff also notes
5 that while Ms. Williams' parents may have some wealth, this does not mean Ms. Williams has the
6 present ability to pay for basic reasonable living expenses. At the hearing, Ms. Williams should be
7 prepared to discuss her current financial situation, including monthly salary, any child support payments,
8 monthly living expenses, financial obligations and also should provide any documentary evidence she
9 believes is relevant to the issue of economic hardship. Mr. Hugo should also be prepared to provide
10 documentary evidence to show that Ms. Williams will not suffer economic hardship if she is denied
11 relief from the 2001 tax liability. Mr. Hugo should also be prepared to discuss the status of child
12 support payments.

13 Knowledge or Reason to Know

14 As relevant here, relief is appropriate with respect to an underpayment, if the requesting
15 spouse knew or had reason to know that the other spouse would not pay the stated tax. Ms. Williams
16 has stated that she was not aware that Mr. Hugo was not going to pay the tax owed when she signed the
17 return, and she has offered evidence that he had the funds to pay the liability at or close to the time when
18 the return was filed. Mr. Hugo has stated that he told Ms. Williams that he could not pay the household
19 bills and the taxes. However, Mr. Hugo has also stated that at the time the return was filed he had
20 \$11,500 in his account. This was sufficient to pay the joint 2001 tax liability. Thus, it appears to staff
21 that Mr. Hugo has made potentially conflicting statements about his financial situation at the time the
22 2001 tax return was filed. While Ms. Williams has presented documentation, including mutual fund
23 statements, to show that there were funds available near the time the return was filed, Mr. Hugo has yet
24 to provide documentary evidence to the contrary. At the hearing, Mr. Hugo should be prepared to
25 discuss and provide evidence to support his contention that Ms. Williams had knowledge that he was not
26 going to pay the taxes when the return was filed. Respondent should also be prepared to discuss what
27 evidence it believes supported its finding that Ms. Williams did not know the taxes would not be paid.

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1 Significant Benefit

2 Respondent found that Mr. Hugo provided no evidence of significant benefit to Ms.
3 Williams from the underpayment of tax. Mr. Hugo has not yet provided evidence that the underpayment
4 of tax resulted in a significant benefit, above and beyond normal support, to Ms. Williams from the
5 underpayment of tax. At the hearing, Mr. Hugo should be prepared to discuss how the underpayment
6 resulted in a significant benefit to Ms. Williams.

7 Nonrequesting Spouse's Legal Obligation

8 The trial court reserved jurisdiction over the issue of which spouse was obligated to pay
9 the outstanding state and federal tax liabilities for 2000 pending resolution of Ms. Williams's request for
10 innocent spouse relief, but did not make any specific determination. The appellate court generally
11 affirmed the trial court's findings, but did not make a determination of this issue. Thus, it appears to
12 staff that neither party is legally obligated to pay the outstanding tax liability pursuant to a divorce
13 decree or settlement. Thus, this factor appears to be neutral. At the hearing, appellants should be
14 prepared to discuss whether further appeals have been filed and if so, whether any court has assigned the
15 legal obligation to either appellant.

16 Compliance with Income Tax Laws

17 Respondent found that Ms. Williams did not have any income tax compliance problems,
18 but Mr. Hugo has asserted that the IRS denied Ms. Williams request for federal innocent spouse relief in
19 part due to compliance problems in 1993 and 1994. Staff observes that as relevant here, the factor to
20 consider is whether Ms. Williams has made a good faith effort to comply with income tax laws in years
21 following the 2000 tax liability. No evidence has been presented to imply that Ms. Williams has had
22 compliance problems subsequent to her request for innocent spouse relief. At the hearing, all parties
23 should be prepared to discuss whether any compliance problems occurred in the years following Ms.
24 Williams request for relief.

25 Abuse

26 While respondent did not find abuse as a factor in this case, staff notes that the appellate
27 court found that Ms. Williams apparently stated, during testimony as part of the couple's divorce, that
28 she agreed to sign a document purporting to limit her ownership in the family home to eight percent

1 although she was jointly liable for an \$800,000 loan on the property because she felt threatened by Mr.
2 Hugo. She testified that she was “afraid physically” and that at some point he was physically
3 confrontational with her. (See Williams Supp. Br., Attachment at p. 5.)

4 Conclusion

5 Generally, it appears that Mr. Hugo has yet to present sufficient evidence to support his
6 contentions or show error in respondent’s determination. At the hearing, Mr. Hugo should consider
7 bringing evidence to clarify the issues of knowledge that the taxes would not be paid, economic
8 hardship, legal obligation to pay the tax pursuant to the divorce, and any other area he believes shows
9 that respondent erred in determining to grant Ms. Williams relief from liability from the underpaid
10 portion of the tax for 2000. In addition, the parties should be prepared to discuss the U.S. Tax Court
11 determination that appellant is entitled to equitable innocent spouse relief under IRC section 6015(f).

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