

**Proposed Text of California Code of Regulations,
Title 18, Sections**

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1004. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the private railroad car tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 11651, Revenue and Taxation Code. Reference: Sections 11408.5 and 11551-11555, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1032. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the timber yield tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 38701, Revenue and Taxation Code. Reference: Sections 38454.5 and 38601-38607, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1124.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the motor vehicle fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7657.5 and 8101-8131, Revenue and Taxation Code; Sections 297, 297.5 and 308, Family Code.

1249. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the underground storage tank maintenance fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50112.6 and 50139-50142.2, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1336. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the use fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 9251, Revenue and Taxation Code. Reference: Sections 8880 and 9151-9156, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

1422.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the diesel fuel tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60210.5 and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2251. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the oil spill response, prevention, and administration fees, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 46601, Revenue and Taxation Code. Reference: Sections 46159 and 46501-46507, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2303.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the energy resources surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 40171, Revenue and Taxation Code. Reference: Sections 40105 and 40111-40117, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2433. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the emergency telephone users surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 41128, Revenue and Taxation Code. Reference: Sections 41099 and 41100-41106, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

2571. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the alcoholic beverage tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 32451, Revenue and Taxation Code. Reference: Sections 32258 and 32401-32407, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3022. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the hazardous substances tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 43159.1, 43159.2, and 43451-43456, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3302.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the integrated waste management fee, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Sections 45158 and 45651-45656, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

3502.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for tax, fees, or surcharge under the fee collection procedures law, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Sections 55045.1 and 55221-55226, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4106. Innocent Spouse or Registered Domestic Partner Relief from Liability.

A spouse or registered domestic partner claiming relief from liability for the cigarette and tobacco products tax, interest, penalties, and other amounts shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903 are met.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: Sections 30285 and 30361-30384, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.

4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.

(a)(1) IN GENERAL. A spouse claiming relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the nonclaiming spouse;

(C) The spouse claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the claiming spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the claiming spouse liable for the liability, taking into account whether the claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) BENEFITED. Whether a claiming spouse has benefited directly or indirectly from the liability will be determined by a review by the board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The claiming spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the claiming spouse, or lavish or luxury purchases made by either spouse may be evidence that the claiming spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a claiming spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the claiming spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the claiming spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) ATTRIBUTION. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A claim may be filed if, at the time relief is requested, the claiming spouse is no longer married to or is legally separated from the nonclaiming spouse, or the claiming spouse is no longer a member of the same household as the nonclaiming spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) WRITTEN REQUEST FOR RELIEF. To seek relief under these provisions, a claiming spouse may submit a written request for relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) STATUTE OF LIMITATIONS. These provisions shall apply to all calendar months, quarters, or years for claims made no later than one year after the board's first contact with the spouse making the claim.

Claims made after one year from the board's first contact with the spouse making the claim shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or more than five years from the finality date on the board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(f) REFUNDS. A refund of any amounts under these provisions shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(g) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.

(1) Criteria for Equitable Relief.

(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:

1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.
2. The claiming spouse would suffer economic hardship if relief is not granted.
3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.
4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.
5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)
6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.

(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:

1. The claiming spouse will not suffer economic hardship if relief is not granted.
2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.
3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.
4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.
5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.
6. The tax for which relief is being requested is attributable to the claiming spouse.

(2) Conditions for Relief. The following conditions apply to claims for equitable relief:

(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.

(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).

(i) The board shall send notification by mail of the claim for relief from liability and the basis for that claim to the nonclaiming spouse.

(j) REGISTERED DOMESTIC PARTNERS. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5, and 60501-60512, Revenue and Taxation Code; Sections 297, 297.5, and 308, Family Code.