

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MEI ZHEN ZHENG	:	DECISION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 827936
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 2006.	:	

Petitioner, Mei Zhen Zheng, filed an exception to the determination of the Administrative Law Judge issued on December 27, 2018. Petitioner appeared by Wong, Wong & Associates, PC (Sanghoon Shon, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Peter Ostwald, Esq., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Oral argument was not requested. The Tax Appeals Tribunal's receipt of petitioner's reply brief on April 18, 2019 began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner is entitled to relief from joint and several liability on a joint tax return for 2006 pursuant to Tax Law § 654.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except findings of fact 7 and 8, which we have modified to more clearly represent the record. These facts, so modified, are set forth below.

1. Petitioner, Mei Zhen Zheng, and her then-husband, Yu An Yu, filed a joint New York income tax return for the year at issue, reporting schedule C income and expenses from the operation of a restaurant.

2. In May 2007, the Division of Taxation (Division) commenced an audit of petitioner and Mr. Yu's jointly filed personal income tax returns for the years 2004, 2005 and 2006 (audit period), in order to verify the reported schedule C income and expenses.

3. As a result of the audit, the Division determined that the amount of income on the schedule C for the audit period was underreported. The Division issued to petitioner and Mr. Yu a notice of deficiency, dated October 25, 2007, that assessed personal income tax due of \$53,665.00, plus penalty and interest, for the years 2004 through 2006.¹

4. Petitioner and Mr. Yu did not file a timely protest of the notice of deficiency and on August 25, 2008, the Division issued a notice and demand for payment of tax due to them for the years 2004, 2005, and 2006.

5. On or about May 1, 2016, petitioner filed a request for innocent spouse relief and separation of liability and equitable relief, form IT-285 (request), with the Division for tax year 2006. In the request, petitioner stated:

¹ Only tax year 2006 is at issue here. For 2006, the notice of deficiency asserted tax due of \$17,765.00 plus penalty and interest.

“I don’t know english (sic). I can’t write checks and am just a traditional Chinese housewife. In [illegible] housewife has no right to touch and manage money. I was helping in the restaurant and taking care (sic) the kids was all the house work. I didn’t have a bank account and don’t have (sic) driver license.”

6. The Division sent a request for additional information to petitioner, dated May 19, 2016, requesting that petitioner provide additional information to support her request for innocent spouse relief. Petitioner did not respond to the Division’s request for additional information.

7. On July 29, 2016, the Division issued a relief from joint liability determination to petitioner, denying her request for innocent spouse relief for tax year 2006, stating that petitioner failed to comply with its information request. According to an affidavit of Tammy Weinstock, an employee of the Division in its the Income/Franchise Desk Audit Bureau, who handled petitioner’s request for innocent spouse relief, petitioner’s request for innocent spouse relief was denied because it was filed more than two years after the date the Division first attempted to collect the tax. As a result, according to Ms. Weinstock, petitioner would only be entitled to request separation of liability or equitable relief. Ms. Weinstock stated that petitioner did not qualify for separation of liability relief because petitioner shared an address with her spouse at the time of the filing of her request. Ms. Weinstock also denied petitioner equitable relief because petitioner did not have enough positive factors indicating that granting relief would be appropriate in this instance, noting that petitioner had not shown economic hardship or that petitioner did not have reason to know of the unreported income and did not allege abuse or health issues.

8. At the hearing, petitioner offered a copy of a divorce judgment for petitioner and Mr. Yu that was entered on October 3, 2007.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began her determination by citing the section of the Tax Law that provides relief to current and former spouses from joint and several liability. She noted that because the relevant section of the Tax Law is based on Internal Revenue Code (IRC) (26 USC) § 6015, which provides for relief from joint and several liability on a joint federal return, it would be appropriate to refer to federal law to determine petitioner's eligibility for innocent spouse relief.

The Administrative Law Judge listed the statutory requirements for granting innocent spouse relief pursuant to IRC (26 USC) § 6015 (b), which include that a joint return has been made for the tax year for which relief is sought; that the return contains an understatement of tax attributable to erroneous items of one individual filing the joint return; that the other individual establishes that in signing the return, he or she did not know, and had no reason to know, of the understatement; that under all the facts and circumstances, it would be inequitable to hold the individual seeking innocent spouse status liable for the deficiency in tax resulting from the understatement; and that the individual seeking innocent spouse status elects this relief within two years after any collection activity has begun.

The Administrative Law Judge determined that petitioner failed to show that she did not know, or had no reason to know, that the return for the year at issue contained substantial understatements. The Administrative Law Judge based this conclusion on petitioner's admitted involvement in her then-husband's business, which belied petitioner's claim that she had no reason to know what was going on in the family business.

The Administrative Law Judge found that there was no evidence that Mr. Yu attempted to conceal additional income from petitioner and concluded that petitioner's choice to not review or

question the joint returns did not relieve her from joint and several liability. The Administrative Law Judge based this conclusion on state and federal case law, finding that complete deference to the other spouse's judgment concerning the couple's finances, standing alone, is insufficient to establish that a spouse has no reason to know of the other spouse's underreporting. According to the Administrative Law Judge, an innocent spouse is one who, despite reasonable efforts to ascertain the accuracy of a joint return, remains ignorant of the return's illegitimacy. The Administrative Law Judge found that petitioner made no such effort.

The Administrative Law Judge concluded that petitioner failed to meet the requirement that she did not know or have reason to know of the understatements contained in the income tax return filed for the year 2006 and that the Division properly denied her request for innocent spouse relief and separation of liability and equitable relief.

ARGUMENTS ON EXCEPTION

Petitioner states that, due to her limited education and lack of proficiency in the English language, she was unable to respond to the notice of deficiency before it became a fixed and final liability. Petitioner argues that because she did not participate in the management of the restaurant and was prevented from making household financial decisions during the year at issue, she should not be held liable for the deficiency asserted. She states that she had no reason to know of the underreporting of income that gave rise to the deficiency and, considering her current financial hardship, it would be inequitable to find her liable for the deficiency. She asks this Tribunal to grant equitable relief from joint and several liability for the year at issue.

The Division states that the Administrative Law Judge correctly determined the issues in this matter and that the determination should be affirmed. The Division argues that petitioner failed to bear her burden of proof in demonstrating that she was entitled to relief from joint and

several liability. The Division states that there was no evidence that petitioner's former husband attempted to conceal the restaurant's finances from her, and thus petitioner could not show that she did not know or have reason to know that the income tax return for the year at issue contained a substantial understatement of income.

OPINION

Relief from joint and several tax liability with a current or former spouse is provided by Tax Law § 654, which incorporates IRC (26 USC) § 6015. Three types of relief, each with different eligibility requirements, are available to a joint filer under IRC (26 USC) § 6015: innocent spouse relief (IRC [26 USC] § 6015 [b]); allocation of liability between former or separated spouses (IRC [26 USC] § 6015 [c]); and equitable relief (IRC [26 USC] § 6015 [f]). Because Tax Law § 654 directly incorporates IRC (26 USC) § 6015, it is appropriate to refer to the IRC, Treasury regulations and federal and New York case law to determine petitioner's eligibility for relief from joint and several liability (Tax Law § 607).

The requirements for eligibility for innocent spouse relief from joint liability under IRC (26 USC) § 6015 (b) include:

- “(A) a joint return has been made for a taxable year;
- (B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;
- (C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;
- (D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and
- (E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the

Secretary has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement” (IRC [26 USC] § 6015 [b] [1]).

The record demonstrates that petitioner filed a form IT-285, request for innocent spouse relief, on or about May 1, 2016. On August 25, 2008, the Division issued a notice and demand to petitioner for the notice of deficiency issued on October 25, 2007, thus beginning collection action. We note that there is a two-year limitation period for requesting relief measured from the start of collection action (IRC [26 USC] § 6015 [b] [1] [E]). Because petitioner’s request for innocent spouse relief was filed more than two years after the beginning of collection action by the Division, the Division properly denied petitioner’s request on that basis.

Separation of liability relief under IRC (26 USC) § 6015 (c) is available to a requesting taxpayer who is: (1) no longer married to the nonrequesting spouse or; (2) is legally separated from the nonrequesting spouse or; (3) has not cohabitated for the last 12 months with the nonrequesting spouse (IRC [26 USC] § 6015 [c] [3] [A] [i]) . However, similar to IRC (26 USC) § 6015 (b), IRC (26 USC) § 6015 (c) requires that a request for separation of liability be made within two years of the beginning of any collection action (IRC [26 USC] § 6015 [c] [3] [B]).² Thus, because petitioner did not file a request for relief within two years of the issuance of the notice and demand, the Division properly denied separation of liability relief for petitioner.

² The record contains an affidavit dated March 14, 2018, from Tammy Weinstock, the audit supervisor who handled petitioner’s request (*see* finding of fact 7). According to the narrative contained in attachment A to her affidavit, the Division denied petitioner separation of liability relief based on the fact that petitioner shared an address with her former spouse at the time of the filing of the request (*id.*). We note that IRC (26 USC) § 6015 (c) merely requires that the requestor be divorced from, legally separated from, *or* not have had cohabitated with the nonrequesting spouse for at least 12 months prior to making a request for relief (IRC [26 USC] § 6015 [c] [3] [A] [i]). Although petitioner submitted documentation of her divorce at the hearing, the two-year limitation period for requesting separation of liability relief measured from the first collection action still applies (IRC [26 USC] § 6015 [c] [3] [B]).

The remaining basis for the granting of relief from joint and several liability is equitable relief (IRC [26 USC] § 6015 [f]). The requirements for such relief are, in relevant part:

“(f) Equitable relief.--Under procedures prescribed by the Secretary, if--
(A) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either);
and

(B) relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.”

Unlike under the other two bases for relief under IRC (26 USC) § 6015, there is no two-year limitation period for equitable relief from joint and several liability for purposes of federal and New York innocent spouse requests (*see* Rev Proc 2013-34; *see also* TSB-M-11[11]I). The granting of equitable relief is discretionary and only available if relief is unavailable under the other two bases (Tax Law § 6015 [f]; Treas Reg [26 CFR] § 1.6015-2; *see also* form IT-285-I [9/15] [instructions for form IT-285]). Although all facts and circumstances are to be considered in determining whether to grant equitable relief (IRC [26 USC] § 6015 [f] [1]), important factors have been identified under the federal regulations. These include whether the requesting spouse has directly or indirectly benefitted from the understatement resulting in the deficiency; whether the requesting spouse received transfers of property beyond normal support from the nonrequesting spouse; whether the requesting spouse has been deserted by the nonrequesting spouse; whether the requesting spouse is married to, separated from or divorced from the nonrequesting spouse; whether the requesting spouse would suffer economic hardship if relief is not granted; whether the requesting spouse was abused or financially controlled by the nonrequesting spouse; whether the requesting spouse knew of or had reason to know of the understatement; and the degree to which the understatement was attributable to the nonrequesting spouse (Treas Reg [26 CFR] § 1.6015-2; *see also* Rev Proc 2000-15).

We agree with the Division that, based on all factors listed above, petitioner failed to bear her burden of proof. Here, petitioner did not show enough factors to grant her request for equitable relief. For example, petitioner shared a mailing address with her former spouse on her application. Petitioner did not provide additional information or documentation supporting her claim that holding her liable for the tax deficiency at issue would result in economic hardship or financial distress. Furthermore, petitioner failed to show that she did not know or had no reason to know of the understatement and never alleged abuse or physical or mental problems.

Petitioner stated in her request for relief that she was not permitted to handle household finances and that she was caring for her disabled son full-time. Although these allegations, if substantiated, could represent factors in favor of granting equitable relief, petitioner submitted no further documentation, other than a copy of the divorce judgment at the hearing, despite the Division's prior request for additional information (*see* 20 NYCRR 151.10 [e] [2], ["The [Division] may request additional sworn statements, testimony under oath or any other proof that it requires to determine whether the applicant should be relieved of liability . . ."]). Thus, petitioner failed to bear her burden of proof in showing that the Division's determination to deny her request for relief from joint and several liability was improper or incorrect (IRC [26 USC] § 6015 [c] [2]; *see also* Tax Law § 689 [e]).

Even if petitioner had substantiated her allegation that she did not engage in financial decisions regarding the family business, such a showing, standing alone, would be insufficient to demonstrate that she had no reason to know of the understatement of income on the return and entitle her to relief (*Resser v Commr.*, 74 F3d 1528, 1536 [7th Cir 1996]). This is because, as stated in *Resser*, the constructive knowledge standard is an objective one: "[a] spouse has 'reason to know' if a reasonably prudent person, under the circumstances of the taxpayer claiming

innocent spouse relief, could be expected to know, at the time of signing the return, that the tax return contained a substantial understatement or that further investigation was warranted” (*id.*). A spouse’s role as a homemaker, giving complete deference to the other spouse’s judgement concerning the couple’s finances, standing alone, is insufficient to establish that a spouse had no reason to know of an understatement (*id.*).

Lastly, we address petitioner’s attachment of additional evidence to her brief on exception that was not offered at the hearing below. We must reject petitioner's attempt at this point to introduce new evidence after the record has been closed. As we held in *Matter of Schoonover* (Tax Appeals Tribunal, August 15, 1991):

“[i]n order to maintain a fair and efficient hearing system, it is essential that the hearing process be both defined and final. If the parties are able to submit additional evidence after the record is closed, there is neither definition nor finality to the hearing. Further, the submission of evidence after the closing of the record denies the adversary the right to question the evidence on the record. For these reasons we must follow our policy of not allowing the submission of evidence after the closing of the record.”

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Mei Zhen Zheng is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Mei Zhen Zheng is denied; and
4. The Division’s determination to deny petitioner’s request for relief from joint and several liability is sustained.

DATED: Albany, New York
October 10, 2019

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner