

Introduced by Senator Walters

February 17, 2010

An act to amend Section 18533 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1065, as introduced, Walters. Income tax: joint returns.

Existing income tax laws provide that an individual who made a joint return may elect, within 2 years of the date collection activities are initiated, to be relieved from liability for additional taxes and penalties if, among other things, that individual did not know of, and had no reason to know of, an understatement of tax attributable to erroneous items of the other individual filing the joint return.

This bill would, as of January 1, 2009, also provide that an individual who has made a joint return and has been granted relief under specified Internal Revenue Code provisions relating to joint and several liability with respect to a federal joint income tax return, is eligible for relief from liability for additional taxes and penalties, except under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18533 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 18533. (a) (1) Notwithstanding subdivision (a) and the first
- 4 sentence of subdivision (b) of Section 19006:

1 (A) An individual who has made a joint return may elect to seek
2 relief under the procedures prescribed under subdivision (b), and
3 (B) If the individual is eligible to elect the application of
4 subdivision (c), the individual may, in addition to any election
5 under subparagraph (A), elect to limit the individual’s liability for
6 any deficiency with respect to the joint return in the manner
7 prescribed under subdivision (c).
8 (2) Any determination under this section shall be made without
9 regard to community property laws.
10 (b) (1) Under procedures prescribed by the Franchise Tax
11 Board, if—
12 (A) A joint return has been made under this chapter for a
13 taxable year,
14 (B) On that return there is an understatement of tax attributable
15 to erroneous items of one individual filing the joint return,
16 (C) The other individual filing the joint return establishes that
17 in signing the return he or she did not know of, and had no reason
18 to know of, that understatement,
19 (D) Taking into account all facts and circumstances, it is
20 inequitable to hold the other individual liable for the deficiency in
21 tax for that taxable year attributable to that understatement, and
22 (E) The other individual elects (in the form and manner as the
23 Franchise Tax Board may prescribe) the benefits of this subdivision
24 not later than the date that is two years after the date the Franchise
25 Tax Board has begun collection activities with respect to the
26 individual making the election, then the other individual shall be
27 relieved of liability for tax (including interest, penalties, and other
28 amounts) for that taxable year to the extent that the liability is
29 attributable to that understatement.
30 (2) If an individual who, but for subparagraph (C) of paragraph
31 (1), would be relieved of liability under paragraph (1), establishes
32 that in signing the return the individual did not know, and had no
33 reason to know, the extent of the understatement, then the
34 individual shall be relieved of liability for tax (including interest,
35 penalties, and other amounts) for that taxable year to the extent
36 that the liability is attributable to the portion of the understatement
37 of which that individual did not know and had no reason to know.
38 (3) For purposes of this subdivision, the term “understatement”
39 has the meaning given to that term by Section 6662(d)(2)(A) of
40 the Internal Revenue Code.

1 (c) (1) Except as provided in this subdivision, if an individual
2 who has made a joint return for any taxable year elects the
3 application of this subdivision, the individual's liability for any
4 deficiency that is assessed with respect to the return may not exceed
5 the portion of the deficiency properly allocable to the individual
6 under subdivision (d).

7 (2) Except as provided in clause (ii) of subparagraph (A) of
8 paragraph (3) or subparagraph (C) of paragraph (3), each individual
9 who elects the application of this subdivision shall have the burden
10 of proof with respect to establishing the portion of any deficiency
11 allocable to that individual.

12 (3) (A) (i) An individual shall only be eligible to elect the
13 application of this subdivision if—

14 (I) At the time the election is filed, that individual is no longer
15 married to, or is legally separated from, the individual with whom
16 that individual filed the joint return to which the election relates,
17 or

18 (II) That individual was not a member of the same household
19 as the individual with whom the joint return was filed at any time
20 during the 12-month period ending on the date the election is filed.

21 (ii) If the Franchise Tax Board demonstrates that assets were
22 transferred between individuals filing a joint return as part of a
23 fraudulent scheme by those individuals, an election under this
24 subdivision by either individual shall be invalid (and subdivision
25 (a) and the first sentence of subdivision (b) of Section 19006 shall
26 apply to the joint return).

27 (B) An election under this subdivision for any taxable year shall
28 be made not later than two years after the date on which the
29 Franchise Tax Board has begun collection activities with respect
30 to the individual making the election.

31 (C) If the Franchise Tax Board demonstrates that an individual
32 making an election under this subdivision had actual knowledge,
33 at the time the individual signed the return, of any item giving rise
34 to a deficiency (or portion thereof) that is not allocable to the
35 individual under subdivision (d), that election does not apply to
36 that deficiency (or portion). This subparagraph does not apply
37 where the individual with actual knowledge establishes that the
38 individual signed the return under duress.

39 (4) (A) Notwithstanding any other provision of this subdivision,
40 the portion of the deficiency for which the individual electing the

1 application of this subdivision is liable (without regard to this
2 paragraph) shall be increased by the value of any disqualified asset
3 transferred to the individual.

4 (B) For purposes of this paragraph—

5 (i) The term “disqualified asset” means any property or right to
6 property transferred to an individual making the election under
7 this subdivision with respect to a joint return by the other individual
8 filing the joint return if the principal purpose of the transfer was
9 the avoidance of tax or payment of tax.

10 (ii) (I) For purposes of clause (i), except as provided in
11 subclause (II), any transfer that is made after the date that is one
12 year before the date on which the first notice of proposed
13 assessment under Article 3 (commencing with Section 19031) of
14 Chapter 4 is sent shall be presumed to have as its principal purpose
15 the avoidance of tax or payment of tax.

16 (II) Subclause (I) does not apply to any transfer pursuant to a
17 decree of divorce or separate maintenance or a written instrument
18 incident to that decree or to any transfer that an individual
19 establishes did not have as its principal purpose the avoidance of
20 tax or payment of tax.

21 (d) For purposes of subdivision (c)—

22 (1) The portion of any deficiency on a joint return allocated to
23 an individual shall be the amount that bears the same ratio to the
24 deficiency as the net amount of items taken into account in
25 computing the deficiency and allocable to the individual under
26 paragraph (3) bears to the net amount of all items taken into
27 account in computing the deficiency.

28 (2) If a deficiency (or portion thereof) is attributable to—

29 (A) The disallowance of a credit, or

30 (B) Any tax (other than tax imposed by Section 17041 or 17062)
31 required to be included with the joint return, and the item is
32 allocated to one individual under paragraph (3), that deficiency
33 (or portion) shall be allocated to that individual. Any item so
34 allocated may not be taken into account under paragraph (1).

35 (3) For purposes of this subdivision—

36 (A) Except as provided in paragraphs (4) and (5), any item
37 giving rise to a deficiency on a joint return shall be allocated to
38 individuals filing the return in the same manner as it would have
39 been allocated if the individuals had filed separate returns for the
40 taxable year.

1 (B) Under rules prescribed by the Franchise Tax Board, an item
2 otherwise allocable to an individual under subparagraph (A) shall
3 be allocated to the other individual filing the joint return to the
4 extent the item gave rise to a tax benefit on the joint return to the
5 other individual.

6 (C) The Franchise Tax Board may provide for an allocation of
7 any item in a manner not prescribed by subparagraph (A) if the
8 Franchise Tax Board establishes that the allocation is appropriate
9 due to fraud of one or both individuals.

10 (4) If an item of deduction or credit is disallowed in its entirety
11 solely because a separate return is filed, the disallowance shall be
12 disregarded and the item shall be computed as if a joint return had
13 been filed and then allocated between the spouses appropriately.

14 (5) If the liability of a child of a taxpayer is included on a joint
15 return, that liability shall be disregarded in computing the separate
16 liability of either spouse and that liability shall be allocated
17 appropriately between the spouses.

18 (e) (1) In the case of an individual who elects to have
19 subdivision (b) or (c) apply, *or who requests equitable relief under*
20 *subdivision (f)*—

21 (A) (i) The determination of the Franchise Tax Board as to
22 whether the liability is to be revised as to one individual filing the
23 joint return shall be made not less than 30 days after notification
24 of the other individual filing the joint return.

25 (ii) Any action taken under this section shall be treated as though
26 it were action on a protest taken under Section 19044 and shall
27 become final upon the expiration of 30 days from the date that
28 notice of the action is mailed to both individuals filing the joint
29 return, unless, within that 30-day period, the individual making
30 the election under subdivision (b) or (c) *or requesting equitable*
31 *relief under subdivision (f)* appeals the determination to the board
32 as provided in clause (iii) or the other individual filing the joint
33 return appeals the determination to the board as provided in Section
34 19045.

35 (iii) The individual making the election under subdivision (b)
36 or (c) *or requesting equitable relief under subdivision (f)* may
37 appeal the determination of the Franchise Tax Board of the
38 appropriate relief available to the individual under this section if
39 that appeal is filed during the 30-day period prescribed in clause
40 (ii) and the appeal shall be treated as an appeal to the board under

1 Section 19045. Notwithstanding the preceding sentence, the
2 individual making the election under subdivision (b) or (c) *or*
3 *requesting equitable relief under subdivision (f)* may appeal to the
4 board at any time after the date that is six months after the date
5 the election is filed with the Franchise Tax Board and before the
6 close of the 30-day period prescribed in clause (ii).

7 (B) Except as otherwise provided in Section 19081 or 19082,
8 no levy or proceeding in court shall be made, begun, or prosecuted
9 against the individual making an election under subdivision (b) or
10 (c) *or requesting equitable relief under subdivision (f)*, for
11 collection of any assessment to which the election relates until the
12 expiration of the 30-day period described in clause (ii) of
13 subparagraph (A), or, if an appeal to the board has been filed under
14 clause (iii) or Section 19045, until the decision of the board has
15 become final.

16 (2) The running of the period of limitations in Section 19371
17 on the collection of the assessment to which the petition under
18 subparagraph (A) of paragraph (1) relates shall be suspended for
19 the period during which the Franchise Tax Board is prohibited by
20 subparagraph (B) of paragraph (1) from collecting by levy or a
21 proceeding in court and for 60 days thereafter.

22 (3) (A) Except as provided in subparagraph (B), notwithstanding
23 any other law or rule of law (other than Section 19306 and Article
24 6 (commencing with Section 19441) of Chapter 6), a credit or
25 refund shall be allowed or made to the extent attributable to the
26 application of this section.

27 (B) In the case of any election under subdivision (b) or ~~(e)~~, (c)
28 *or request for equitable relief under subdivision (f)*, if a decision
29 of the board in any prior proceeding for the same taxable year has
30 become final, that decision shall be conclusive except with respect
31 to the qualification of the individual for relief that was not an issue
32 in that proceeding. The exception contained in the preceding
33 sentence does not apply if the board determines that the individual
34 participated meaningfully in the prior proceeding.

35 (C) No credit or refund shall be allowed as a result of an election
36 under subdivision (c).

37 (f) Under procedures prescribed by the Franchise Tax Board,
38 if taking into account all the facts and circumstances, it is
39 inequitable to hold the individual liable for any unpaid tax or any
40 deficiency (or any portion of either), and relief is not available to

1 the individual under subdivision (b) or (c), the Franchise Tax Board
2 may relieve the individual of that liability.

3 (g) (1) The Franchise Tax Board may prescribe regulations
4 providing methods for allocation of items other than the methods
5 under paragraph (3) of subdivision (d).

6 (2) It is the intent of the Legislature that, in construing this
7 section and any other sections that are specifically cross-referenced
8 in this section, any regulations that may be promulgated by the
9 Secretary of the Treasury under Section 6015 of the Internal
10 Revenue Code, ~~as amended by Public Law 105-206~~, shall apply
11 to the extent that those regulations do not conflict with this section
12 or with any regulations that may be promulgated by the Franchise
13 Tax Board.

14 (h) ~~(1) Except as provided in paragraph (2), the~~ *The*
15 ~~amendments made by Section 5 of Chapter 931 of the Statutes of~~
16 ~~1999 shall apply to any liability for tax arising after October 10,~~
17 ~~1999, and any liability for tax arising on or before that date but~~
18 ~~remaining unpaid as of that date.~~

19 ~~(2) The period specified under subparagraph (E) of paragraph~~
20 ~~(1) of subdivision (b) or subparagraph (B) of paragraph (3) of~~
21 ~~subdivision (c) does not expire before the date that is four years~~
22 ~~after the date of the first collection activity after October 10, 1999.~~

23 (i) (1) *An individual who has made a joint return and has been*
24 *granted relief under Section 6015 of the Internal Revenue Code,*
25 *relating to joint and several liability with respect to a federal joint*
26 *income tax return, shall be eligible for relief under this section if*
27 *all of the following conditions are satisfied:*

28 (A) *The individual requests relief under this section.*

29 (B) *The facts and circumstances that apply to the understatement*
30 *and liabilities for which the relief is requested are the same facts*
31 *and circumstances that applied to the understatement and liabilities*
32 *for which that individual was granted relief under Section 6015*
33 *of the Internal Revenue Code.*

34 (C) *The individual requesting relief under this subdivision*
35 *furnishes the Franchise Tax Board with a copy of the federal*
36 *determination granting that individual relief under Section 6015*
37 *of the Internal Revenue Code. If the federal determination does*
38 *not clearly identify the issues and liabilities for which the individual*
39 *was granted relief under Section 6015 of the Internal Revenue*
40 *Code, the Franchise Tax Board may request, from the individual*

1 *requesting relief, any supporting documentation reasonably*
2 *necessary to substantiate that the issues and liabilities for which*
3 *relief is requested under this section are the same as the issues*
4 *and liabilities for which the individual received relief under Section*
5 *6015 of the Internal Revenue Code.*

6 *(2) This subdivision does not apply if, prior to the expiration of*
7 *the 30-day period described in clause (i) of subparagraph (A) of*
8 *paragraph (1) of subdivision (e), the other individual that filed the*
9 *joint return for which the relief is requested under this subdivision*
10 *submits information to the Franchise Tax Board that indicates*
11 *that relief should not be granted. For purposes of this paragraph,*
12 *“information that indicates that relief should not be granted” is*
13 *limited to the following:*

14 *(A) Information that indicates that the facts and circumstances*
15 *that apply to the understatement and liabilities for which the relief*
16 *is requested are not the same facts and circumstances that applied*
17 *to the understatement and liabilities for which that individual was*
18 *granted relief under Section 6015 of the Internal Revenue Code.*

19 *(B) Information that indicates that there has not been a federal*
20 *determination granting relief under Section 6015 of the Internal*
21 *Revenue Code or that the federal determination granting relief*
22 *under Section 6015 of the Internal Revenue Code has been*
23 *modified, altered, withdrawn, canceled, or rescinded.*

24 *(C) Information indicating that the other individual, as described*
25 *in the first sentence of this paragraph, did not have the opportunity*
26 *to participate, within the meaning of Section 6015 of the Internal*
27 *Revenue Code and the regulations thereunder, in the federal*
28 *administrative or judicial proceeding that resulted in relief under*
29 *Section 6015 of the Internal Revenue Code.*

30 *(j) If, prior to the date the Franchise Tax Board issues its*
31 *determination with respect to a request for relief under this section,*
32 *the individual requesting relief demonstrates to the Franchise Tax*
33 *Board that a request for relief has been filed with the Internal*
34 *Revenue Service pursuant to Section 6015 of the Internal Revenue*
35 *Code and demonstrates that the request for relief involves the same*
36 *facts and circumstances as the request for relief that is pending*
37 *before the Franchise Tax Board, the Franchise Tax Board may*
38 *not deny relief with respect to that request, in whole or in part,*
39 *until federal action on the request for relief under Section 6015*
40 *of the Internal Revenue Code is final.*

1 ~~(i)~~
2 (k) An individual may not be granted relief under this section
3 if a court has revised the tax liability in a proceeding for dissolution
4 of the marriage in accordance with subdivision (b) of Section
5 19006.

6 ~~(j)~~
7 (l) Chapter 3.5 (commencing with Section 11340) of Part 1 of
8 Division 3 of Title 2 of the Government Code shall not apply to
9 any procedure or rule prescribed by the Franchise Tax Board
10 pursuant to this section.

11 ~~(k)~~
12 (m) (1) This section shall become operative on January 1, 2009.

13 (2) *The provisions of subdivision (i) and (j), as amended by the*
14 *act adding this paragraph, shall apply on and after January 1,*
15 *2009.*

16 (3) *The amendments made to subdivisions (e), (g), and (h) shall*
17 *apply to requests for relief received on or after the effective date*
18 *of the act adding this paragraph.*

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