

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN SENATE MAY 18, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 526

Introduced by Senators Fuller and Runner

February 26, 2015

An act to amend Section ~~18533~~ *19006* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 526, as amended, Fuller. Personal income taxes: joint returns: *court orders*: relief from liability.

Existing law generally provides that ~~whenever a joint income tax return is filed by spouses or registered domestic partners the liability for the tax is joint and several, and that the spouse or partner who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on the income is liable for the payment of the taxes imposed by the Personal Income Tax Law on that income, and that whenever a joint income tax return is filed by spouses or registered domestic partners the liability for the tax is joint and several.~~ Existing law allows, under specified conditions, a court in a proceeding for dissolution of marriage ~~or the Franchise Tax Board~~ to revise the income tax liabilities *on a joint return* of spouses or registered domestic partners, but prohibits revisions to relieve a spouse *or domestic partner* of tax liability on income earned by or subject to the exclusive management and control of the ~~spouse~~: *spouse or domestic partner*. Existing law also provides that the order revising tax liability is not effective if the gross income reportable on the return exceeds \$150,000

or the amount of the tax liability the spouse is relieved of exceeds \$7,500, except as specified.

This bill would instead provide that an order revising tax liability may relieve a spouse or domestic partner of tax liability on income earned by or subject to the exclusive management and control of that spouse or domestic partner, except if assets or liabilities are transferred between the individuals filing the joint return for the principal purpose of avoidance of the payment of tax or as part of a fraudulent scheme by those individuals or that liability is uncollectible and, within 3 years of when the court order is effective, specified conditions also apply. This bill would also instead provide that the order revising tax liability is not effective if the gross income reportable on the return exceeds \$200,000 or the amount of the tax liability the spouse is relieved of exceeds \$10,000, except as specified, and would require those amounts to be recomputed annually beginning on January 1, 2017, as specified. The bill would apply to court orders served or acknowledged on or after the effective date of this bill.

~~Existing income tax law allows, under procedures prescribed by the Franchise Tax Board, an individual who has made a joint return to elect to seek relief from liability for an understatement of tax or to limit the individual's liability of any tax deficiency. Existing income tax laws require an individual making those elections to be relieved of liability from tax if specified conditions are met, and requires that the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual as specified by law if, among other things, the individual meets the burden of proof as specified. Under existing income tax law, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency, and relief is not available to the individual under these procedures, the Franchise Tax Board is authorized to relieve the individual of that liability, as provided.~~

~~This bill would allow, for requests for relief received on and after January 1, 2016, when taking into account all the facts and circumstances, the fact that the individual's liability for any unpaid tax or deficiency for any taxable year where a joint return has been filed has been revised under a judgment of dissolution of marriage to be a factor weighing in favor of relief from tax liability on income earned by or subject to the exclusive management and control of the individual, whether or not the individual was a victim of abuse at the time the return~~

was filed or whether or not funds that would have been used to pay the tax or deficiency were misappropriated by the nonrequesting spouse.

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 19006 of the Revenue and Taxation Code
2 is amended to read:

3 19006. (a) The spouse who controls the disposition of or who
4 receives or spends community income as well as the spouse who
5 is taxable on the income is liable for the payment of the taxes
6 imposed by Part 10 (commencing with Section 17001) on that
7 income.

8 (b) (1) Whenever a joint return is filed by a husband and wife,
9 the liability for the tax on the aggregate income is joint and several.
10 ~~The liability may be revised by a court in a proceeding for~~
11 ~~dissolution of the marriage of the husband and wife, provided:~~

12 ~~(1) The order revising tax liability may not relieve a spouse of~~
13 ~~tax liability on income earned by or subject to the exclusive~~
14 ~~management and control of the spouse. The liability of the spouse~~
15 ~~for the tax, penalties, and interest due for the taxable year shall be~~
16 ~~in the same ratio to total tax, penalties, and interest due for the~~
17 ~~taxable year as the income earned by or subject to the management~~
18 ~~and control of the spouse is to total gross income reportable on the~~
19 ~~return.~~

20 ~~(2) The order revising tax liability:~~

21 ~~(2) The amount of liability on a joint return may not be reduced,~~
22 ~~but the individual responsible for all or part of that liability may~~
23 ~~be revised by a court in a proceeding for dissolution of the~~
24 ~~marriage provided the order revising tax liability on the joint~~
25 ~~return:~~

26 (A) Must separately state the income tax liabilities for the
27 taxable years for which revision of tax liability is granted.

28 (B) Shall not revise a tax liability that has been fully paid prior
29 to the effective date of the order; however, any unpaid amount
30 may be revised.

31 (C) Shall become effective when the Franchise Tax Board is
32 served with or acknowledges receipt of the order.

1 (D) (i) Shall not be effective if the gross income reportable on
2 the return exceeds ~~one two hundred fifty~~ thousand dollars
3 ~~(\$150,000)~~ (\$200,000) or the amount of tax liability the spouse is
4 relieved of exceeds ~~seven ten thousand five hundred~~ dollars
5 ~~(\$7,500)~~ (\$10,000), unless a tax revision clearance certificate is
6 obtained from the Franchise Tax Board and filed with the court.

7 (ii) *Beginning on January 1, 2017, and annually thereafter, the*
8 *amounts specified in clause (i) shall be recomputed in accordance*
9 *with subparagraph (B) of paragraph (3) of subdivision (b) of*
10 *Section 19442, modified by substituting “January 1, 2017” for*
11 *“January 1, 2004.”*

12 (E) *Shall not be effective to relieve a spouse of the tax liability*
13 *on income earned by or subject to the exclusive management and*
14 *control of that spouse if either of the following applies:*

15 (i) *Assets or liabilities are transferred between the individuals*
16 *filing the joint return for the principal purpose of avoidance of the*
17 *payment of tax or as part of a fraudulent scheme by those*
18 *individuals.*

19 (ii) *That liability is uncollectible and, within three years of the*
20 *date the court order is effective pursuant to subparagraph (C),*
21 *either of the following also applies:*

22 (I) *The spouse obligated to pay that liability pursuant to the*
23 *court order files for bankruptcy and that liability is discharged in*
24 *bankruptcy.*

25 (II) *The spouse obligated to pay that liability pursuant to the*
26 *court order becomes a nonresident.*

27 (c) ~~Notwithstanding subdivisions (a) and (b),~~ *subdivision (a) or*
28 *paragraph (1) of subdivision (b), whenever a joint return is filed*
29 *by a husband and wife and the tax liability is not fully paid, that*
30 *liability, including interest and penalties, may be revised by the*
31 *Franchise Tax Board as to one spouse.*

32 (1) However, the liability shall not be revised:

33 (A) To relieve a spouse of tax liability on income earned by or
34 subject to the exclusive management and control of the spouse.
35 The liability of the spouse for the tax, penalties, and interest due
36 for the taxable year shall be in the same ratio to total tax, penalties,
37 and interest due for the taxable year as the income earned by or
38 subject to the management and control of the spouse is to total
39 gross income reportable on the return.

1 (B) To relieve a spouse of liability below the amount actually
2 paid on the liability prior to the granting of relief, including credit
3 from any other taxable year available for application to the liability.

4 (2) The liability may be revised only if the spouse whose liability
5 is to be revised establishes that he or she did not know of, and had
6 no reason to know of, the nonpayment at the time the return was
7 filed. For purposes of this paragraph, “reason to know” means
8 whether or not a reasonably prudent person would have had reason
9 to know of the nonpayment.

10 ~~(3) For purposes of this section, the determination of the spouse~~
11 ~~to whom items of gross income are attributable shall be made~~
12 ~~without regard to community property laws.~~

13 ~~(4)~~

14 (3) The determination of the Franchise Tax Board as to whether
15 the liability is to be revised as to one spouse shall be made not less
16 than 30 days after notification of the other spouse and shall be
17 based upon whether, under all of the facts and circumstances
18 surrounding the nonpayment, it would be inequitable to hold the
19 spouse requesting revision liable for the nonpayment. Any action
20 taken under this section shall be treated as though it were action
21 on a protest taken under Section 19044 and shall become final
22 upon the expiration of 30 days from the date that notice of the
23 action is mailed to both spouses, unless, within that 30-day period,
24 one or both spouses appeal the determination to the board as
25 provided in Section 19045.

26 (5)

27 (4) This subdivision shall apply to all taxable years subject to
28 the provisions of this part, but shall not apply to any taxable year
29 which has been closed by a statute of limitations, res judicata, or
30 otherwise.

31 *(d) For purposes of this section, the determination of the spouse*
32 *to whom items of gross income are attributable shall be made*
33 *without regard to community property laws.*

34 *(e) The amendments made to this section by the act adding this*
35 *subdivision shall apply to court orders served or acknowledged*
36 *on or after the effective date of that act.*

37 ~~SECTION 1. Section 18533 of the Revenue and Taxation Code~~
38 ~~is amended to read:~~

39 ~~18533. (a) (1) Notwithstanding subdivision (a) and the first~~
40 ~~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~~
21 ~~in tax for that taxable year attributable to that understatement;~~
22 ~~and~~
23 ~~—(E) The other individual elects (in the form and manner as the~~
24 ~~Franchise Tax Board may prescribe) the benefits of this~~
25 ~~subdivision not later than the date that is two years after the date~~
26 ~~the Franchise Tax Board has begun collection activities with~~
27 ~~respect to the individual making the election;~~
28 ~~then the other individual shall be relieved of liability for tax~~
29 ~~(including interest, penalties, and other amounts) for that taxable~~
30 ~~year to the extent that the liability is attributable to that~~
31 ~~understatement.~~
32 ~~(2) If an individual who, but for subparagraph (C) of paragraph~~
33 ~~(1), would be relieved of liability under paragraph (1), establishes~~
34 ~~that in signing the return the individual did not know, and had no~~
35 ~~reason to know, the extent of the understatement, then the~~
36 ~~individual shall be relieved of liability for tax (including interest,~~
37 ~~penalties, and other amounts) for that taxable year to the extent~~
38 ~~that the liability is attributable to the portion of the understatement~~
39 ~~of which that individual did not know and had no reason to know.~~

1 ~~(3) For purposes of this subdivision, the term “understatement”~~
2 ~~has the meaning given to that term by Section 6662(d)(2)(A) of~~
3 ~~the Internal Revenue Code.~~

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

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

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

17 ~~(I) At the time the election is filed, that individual is no longer~~
18 ~~married to, or is legally separated from, the individual with whom~~
19 ~~that individual filed the joint return to which the election relates;~~
20 ~~or~~

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

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

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

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

1 where the individual with actual knowledge establishes that the
2 individual signed the return under duress.

3 ~~(4) (A) Notwithstanding any other provision of this subdivision,~~
4 ~~the portion of the deficiency for which the individual electing the~~
5 ~~application of this subdivision is liable (without regard to this~~
6 ~~paragraph) shall be increased by the value of any disqualified asset~~
7 ~~transferred to the individual.~~

8 ~~(B) For purposes of this paragraph—~~

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

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

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

25 ~~(d) For purposes of subdivision (c)—~~

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

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

33 ~~(A) The disallowance of a credit, or~~

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

39 ~~(3) For purposes of this subdivision—~~

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

6 ~~(B) Under rules prescribed by the Franchise Tax Board, an item~~
7 ~~otherwise allocable to an individual under subparagraph (A) shall~~
8 ~~be allocated to the other individual filing the joint return to the~~
9 ~~extent the item gave rise to a tax benefit on the joint return to the~~
10 ~~other individual.~~

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

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

19 ~~(5) If the liability of a child of a taxpayer is included on a joint~~
20 ~~return, that liability shall be disregarded in computing the separate~~
21 ~~liability of either spouse and that liability shall be allocated~~
22 ~~appropriately between the spouses.~~

23 ~~(e) (1) In the case of an individual who elects to have~~
24 ~~subdivision (b) or (c) apply, or who requests equitable relief under~~
25 ~~subdivision (f)—~~

26 ~~(A) (i) The determination of the Franchise Tax Board as to~~
27 ~~whether the liability is to be revised as to one individual filing the~~
28 ~~joint return shall be made not less than 30 days after notification~~
29 ~~of the other individual filing the joint return.~~

30 ~~(ii) Any action taken under this section shall be treated as though~~
31 ~~it were action on a protest taken under Section 19044 and shall~~
32 ~~become final upon the expiration of 30 days from the date that~~
33 ~~notice of the action is mailed to both individuals filing the joint~~
34 ~~return, unless, within that 30-day period, the individual making~~
35 ~~the election under subdivision (b) or (c) or requesting equitable~~
36 ~~relief under subdivision (f) appeals the determination to the board~~
37 ~~as provided in clause (iii) or the other individual filing the joint~~
38 ~~return appeals the determination to the board as provided in Section~~
39 ~~19045.~~

1 ~~(iii) The individual making the election under subdivision (b)~~
2 ~~or (c) or requesting equitable relief under subdivision (f) may~~
3 ~~appeal the determination of the Franchise Tax Board of the~~
4 ~~appropriate relief available to the individual under this section if~~
5 ~~that appeal is filed during the 30-day period prescribed in clause~~
6 ~~(ii) and the appeal shall be treated as an appeal to the board under~~
7 ~~Section 19045. Notwithstanding the preceding sentence, the~~
8 ~~individual making the election under subdivision (b) or (c) or~~
9 ~~requesting equitable relief under subdivision (f) may appeal to the~~
10 ~~board at any time after the date that is six months after the date~~
11 ~~the election is filed with the Franchise Tax Board and before the~~
12 ~~close of the 30-day period prescribed in clause (ii).~~

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

22 ~~(2) The running of the period of limitations in Section 19371~~
23 ~~on the collection of the assessment to which the petition under~~
24 ~~subparagraph (A) of paragraph (1) relates shall be suspended for~~
25 ~~the period during which the Franchise Tax Board is prohibited by~~
26 ~~subparagraph (B) of paragraph (1) from collecting by levy or a~~
27 ~~proceeding in court and for 60 days thereafter.~~

28 ~~(3) (A) Except as provided in subparagraph (B), notwithstanding~~
29 ~~any other law or rule of law (other than Section 19306 and Article~~
30 ~~6 (commencing with Section 19441) of Chapter 6), a credit or~~
31 ~~refund shall be allowed or made to the extent attributable to the~~
32 ~~application of this section.~~

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

1 ~~(C) No credit or refund shall be allowed as a result of an election~~
2 ~~under subdivision (c):~~

3 ~~(f) (1) Under procedures prescribed by the Franchise Tax Board,~~
4 ~~if taking into account all the facts and circumstances, it is~~
5 ~~inequitable to hold the individual liable for any unpaid tax or any~~
6 ~~deficiency (or any portion of either), and relief is not available to~~
7 ~~the individual under subdivision (b) or (c), the Franchise Tax Board~~
8 ~~may relieve the individual of that liability:~~

9 ~~(2) Notwithstanding subdivision (b) of Section 19006, when~~
10 ~~taking into account all the facts and circumstances in paragraph~~
11 ~~(1), the fact that the individual's liability for any unpaid tax or~~
12 ~~deficiency for any taxable year where a joint return has been filed~~
13 ~~has been revised under a judgment of dissolution of marriage may~~
14 ~~be a factor weighing in favor of relief from tax liability on income~~
15 ~~earned by or subject to the exclusive management and control of~~
16 ~~the individual, whether or not the individual was a victim of abuse~~
17 ~~at the time the return was filed or whether or not funds that would~~
18 ~~have been used to pay the tax or deficiency were misappropriated~~
19 ~~by the nonrequesting spouse:~~

20 ~~(g) (1) The Franchise Tax Board may prescribe regulations~~
21 ~~providing methods for allocation of items other than the methods~~
22 ~~under paragraph (3) of subdivision (d):~~

23 ~~(2) It is the intent of the Legislature that, in construing this~~
24 ~~section and any other sections that are specifically cross-referenced~~
25 ~~in this section, any regulations that may be promulgated by the~~
26 ~~Secretary of the Treasury under Section 6015 of the Internal~~
27 ~~Revenue Code shall apply to the extent that those regulations do~~
28 ~~not conflict with this section or with any regulations that may be~~
29 ~~promulgated by the Franchise Tax Board:~~

30 ~~(h) The amendments made by Section 5 of Chapter 931 of the~~
31 ~~Statutes of 1999 shall apply to any liability for tax arising after~~
32 ~~October 10, 1999, and any liability for tax arising on or before that~~
33 ~~date but remaining unpaid as of that date:~~

34 ~~(i) (1) An individual who has made a joint return and has been~~
35 ~~granted relief under Section 6015 of the Internal Revenue Code,~~
36 ~~relating to joint and several liability with respect to a federal joint~~
37 ~~income tax return, shall be eligible for relief under this section if~~
38 ~~all of the following conditions are satisfied:~~

39 ~~(A) The individual requests relief under this section:~~

1 ~~(B) The facts and circumstances that apply to the understatement~~
2 ~~and liabilities for which the relief is requested are the same facts~~
3 ~~and circumstances that applied to the understatement and liabilities~~
4 ~~for which that individual was granted relief under Section 6015~~
5 ~~of the Internal Revenue Code.~~

6 ~~(C) The individual requesting relief under this subdivision~~
7 ~~furnishes the Franchise Tax Board with a copy of the federal~~
8 ~~determination granting that individual relief under Section 6015~~
9 ~~of the Internal Revenue Code. If the federal determination does~~
10 ~~not clearly identify the issues and liabilities for which the individual~~
11 ~~was granted relief under Section 6015 of the Internal Revenue~~
12 ~~Code, the Franchise Tax Board may request, from the individual~~
13 ~~requesting relief, any supporting documentation reasonably~~
14 ~~necessary to substantiate that the issues and liabilities for which~~
15 ~~relief is requested under this section are the same as the issues and~~
16 ~~liabilities for which the individual received relief under Section~~
17 ~~6015 of the Internal Revenue Code.~~

18 ~~(2) This subdivision does not apply if, prior to the expiration of~~
19 ~~the 30-day period described in clause (i) of subparagraph (A) of~~
20 ~~paragraph (1) of subdivision (c), the other individual that filed the~~
21 ~~joint return for which the relief is requested under this subdivision~~
22 ~~submits information to the Franchise Tax Board that indicates that~~
23 ~~relief should not be granted. For purposes of this paragraph,~~
24 ~~“information that indicates that relief should not be granted” is~~
25 ~~limited to the following:~~

26 ~~(A) Information that indicates that the facts and circumstances~~
27 ~~that apply to the understatement and liabilities for which the relief~~
28 ~~is requested are not the same facts and circumstances that applied~~
29 ~~to the understatement and liabilities for which that individual was~~
30 ~~granted relief under Section 6015 of the Internal Revenue Code.~~

31 ~~(B) Information that indicates that there has not been a federal~~
32 ~~determination granting relief under Section 6015 of the Internal~~
33 ~~Revenue Code or that the federal determination granting relief~~
34 ~~under Section 6015 of the Internal Revenue Code has been~~
35 ~~modified, altered, withdrawn, canceled, or rescinded.~~

36 ~~(C) Information indicating that the other individual, as described~~
37 ~~in the first sentence of this paragraph, did not have the opportunity~~
38 ~~to participate, within the meaning of Section 6015 of the Internal~~
39 ~~Revenue Code and the regulations thereunder, in the federal~~

1 administrative or judicial proceeding that resulted in relief under
2 Section 6015 of the Internal Revenue Code.

3 (j) If, prior to the date the Franchise Tax Board issues its
4 determination with respect to a request for relief under this section,
5 the individual requesting relief demonstrates to the Franchise Tax
6 Board that a request for relief has been filed with the Internal
7 Revenue Service pursuant to Section 6015 of the Internal Revenue
8 Code and demonstrates that the request for relief involves the same
9 facts and circumstances as the request for relief that is pending
10 before the Franchise Tax Board, the Franchise Tax Board may not
11 deny relief with respect to that request, in whole or in part, until
12 federal action on the request for relief under Section 6015 of the
13 Internal Revenue Code is final.

14 (k) An individual may not be granted relief under this section
15 if a court has revised the tax liability in a proceeding for dissolution
16 of the marriage in accordance with subdivision (b) of Section
17 19006.

18 (l) Chapter 3.5 (commencing with Section 11340) of Part 1 of
19 Division 3 of Title 2 of the Government Code shall not apply to
20 any procedure or rule prescribed by the Franchise Tax Board
21 pursuant to this section.

22 (m) (1) This section shall become operative on January 1, 2009.

23 (2) The provisions of subdivisions (i) and (j), as amended by
24 the act adding this paragraph, shall apply on and after January 1,
25 2009.

26 (3) The amendments made to subdivisions (e), (g), and (h) by
27 Chapter 318 of the Statutes of 2010 shall apply to requests for
28 relief received on or after January 1, 2010.

29 (4) The amendments made by the act adding this paragraph
30 shall apply to requests for relief received on or after January 1,
31 2016.