

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MEI ZHEN ZHENG : DETERMINATION
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 a petition for redetermination of a deficiency or for refund of personal income tax under article 22 of the Tax Law for the year 2006.

A hearing was held before Barbara J. Russo, Administrative Law Judge, at the offices of the Division of Tax Appeals in Rochester, New York, on April 5, 2018, at 10:30 A.M., with all briefs to be submitted by June 29, 2018, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Peter B. Ostwald, Esq., of counsel).

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

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 under-reported. 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:

“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 a 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.

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.

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.

8. A divorce judgment for petitioner and Mr. Yu was entered on October 3, 2007.

CONCLUSIONS OF LAW

A. Tax Law § 654 (a) provides that a spouse may receive relief from joint and several liability pursuant to the provision contained in Internal Revenue Code (IRC) § 6015. IRC § 6015 provides for relief from joint and several liability on a joint return if:

(a) a joint return has been made for the tax year;

(b) on the return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(c) the other individual establishes that in signing the return he or she did not know, and had no reason to know of the understatement;

(d) 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

(e) the individual seeking innocent spouse status elects this relief within two years after any collection activity has begun (IRC § 6015 [b] [1]).

As the wording of Tax Law § 654 directly incorporates the provisions of IRC § 6015, it is appropriate to refer to the provisions of the IRC, Treasury regulations and federal and New York case law to determine petitioner's eligibility for innocent spouse relief (*see* Tax Law § 607 [a]).

B. Petitioner has failed to show that she did not know, and had no reason to know, that the return for the year at issue contained substantial understatements. Petitioner argues that the schedule C income and expenses reported for 2006 were from her then-husband's business and that she did not know what was going on in the business, was not involved in the preparation of

tax returns, and was a housewife taking care of her child. However, in petitioner's request for innocent spouse relief filed with the Division, petitioner stated that she helped at the restaurant.

There is no evidence that Mr. Yu attempted to conceal additional income from petitioner. The business income and expenses were plainly listed on the joint returns. Petitioner's choice to not review or question the joint returns does not relieve her from liability. A spouse's role as a homemaker, giving 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" (*Resser v Commissioner*, 74 F3d 1536 [7th Cir 1996]). Furthermore, an innocent spouse is one who despite having made reasonable efforts to investigate the accuracy of the joint return remains ignorant of its illegitimacy (*see Matter of Revere v Tax Appeals Tribunal*, 75 AD3d 860 [3d Dept 2010] [spouse was not relieved of his liability where he intentionally remained ignorant regarding the preparation of his joint tax returns because he did not want to get involved]; *Matter of Rubin v Tax Appeals Tribunal*, 29 AD3d 1089 [3d Dept 2006] [spouse was not relieved of her liability despite her claim that she had never been involved in the financial aspects of the marriage and relied on her husband and the professionals he retained to accurately prepare the tax returns, and there was no evidence that the husband had ever tried to conceal the excluded income]). Here, petitioner made no effort to ascertain the accuracy of the joint returns. Petitioner has 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 the Division properly denied her request for innocent spouse relief and separation of liability and equitable relief.

C. The petition of Mei Zhen Zheng is denied and the relief from joint liability determination, dated July 29, 2016, is sustained.

DATED: Albany, New York
December 27, 2018

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE