

## State of California

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**Legislative Change No.** **03-09**  
Bill Number: SB 285 Author: Speier Chapter Number: 03-370

Laws Affecting Franchise Tax Board: Revenue and Taxation Code Section 18533

Date Filed with the Secretary of the State: September 12, 2003

SUBJECT: Innocent Spouse Relief/FTB Report To Legislature

### **Senate Bill 285 (Speier), as enacted on September 12, 2003, made the following changes to California law:**

Section 18533 of the Revenue and Taxation Code is amended, repealed, and added.

This act allows an individual to receive innocent spouse relief at the state level if the Internal Revenue Service (IRS) granted the individual innocent spouse relief and all of the following conditions are satisfied:

- The individual requests innocent spouse relief from a state income tax liability.
- The facts and circumstances that apply to the understatement and to the liabilities that are the basis of the state request are the same as the facts and circumstances that apply to the understatement and liabilities for which the individual received federal innocent spouse relief.
- The individual requesting relief provides the Franchise Tax Board (FTB) a copy of the federal determination that granted innocent spouse relief. In the event the federal determination by itself is unclear regarding the facts and circumstances that led to the federal relief, FTB is able to request information from the individual requesting innocent spouse relief. Any request by FTB for additional information must be reasonable.

The provision of the act allowing state relief based on federal relief is not applicable if the non-requesting spouse on the joint tax return submits specified information to FTB indicating that the individual requesting relief should not be granted state relief similar to the federal relief. The information must be submitted to FTB within 30 days of the non-requesting spouse receiving notice that the other spouse has requested innocent spouse relief. Information indicating relief should not be granted to the requesting spouse is limited to information indicating that:

- The facts and circumstances that apply to the understatement and liabilities of the request are not the same as those that the requesting spouse received relief at the federal level.
- There has been no federal determination granting innocent spouse relief.
- The federal determination granting relief has been modified, altered, withdrawn, cancelled, or rescinded.
- The non-requesting spouse did not have an opportunity to participate in the federal administrative or judicial proceeding that led to the granting of relief at the federal level.

Bureau Director  
Jana Howard for Brian Putler

Date  
9/23/03

FTB may not deny innocent spouse relief if the individual demonstrates to FTB that they have requested federal innocent spouse relief for the same facts and circumstances and that the federal determination is not yet final.

Under this act, an individual is not eligible for relief from tax liability under any of the innocent spouse provisions if a court revised the same tax liabilities in a court order related to dissolution of the marriage.

This act is effective January 1, 2004, and applies to 1) any tax liability that becomes final on or after the effective date of the act; and 2) any tax liability that became final before the effective date of the act and remains unpaid as of that date.

The innocent spouse provisions as amended in this act cease to be operative as of January 1, 2009.

The innocent spouse provisions in effect before January 1, 2004, will be reinstated as of January 1, 2009.

This act requires FTB to report to the Legislature the impact this act has on requests for innocent spouse relief. The report is due to the Legislature by January 1, 2008, and to the extent data is available to FTB, the report must include the total number and dollar value of 1) innocent spouse claims received each year; and 2) innocent spouse claims where FTB automatically deferred to the IRS as provided in this act.