

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 140

June 27, 1958

JOINT LIABILITY: LIABILITY OF WIFE UNDER SECTION 18555: FAILURE TO FILE

Syllabus:

In the event neither husband nor wife files a return, the joint and several liability provisions of Section 18555 of the Personal Income Tax Law are not applicable to the wife. The wife's liability is limited to the tax upon her income only.

Taxpayer and her former husband filed joint returns in 1946 and 1948, but no returns were filed in 1947, 1949, or 1950. Jeopardy assessments against both parties jointly were filed for all years. Taxpayer has now filed delinquent separate returns for the year 1947, 1949, and 1950 which computes her liability in an amount substantially lower than the original jeopardy assessments. Advice is requested as to whether taxpayer is jointly and severally liable for the full amount of the jeopardy assessment levied jointly against taxpayer and her former husband for the years in which no returns were filed.

Section 18555 imposes joint and several liability for the tax on the aggregate income of spouses who file joint returns. Since this is an exception to the general rule that each person is liable only for taxes upon his own income, the statute implies that a joint return must be filed before such liability attaches.

Ordinarily, there will be little difficulty in determining whether the parties have filed jointly. In 1953, McCord v Granger, 201 Fed 2d 103, held that the return became joint only when it was signed by both spouses. Later cases, however, have indicated that the wife need not sign the return if it reports the income of both spouses and she did not file a separate return (W. L. Kann, 18 TC 1032, affirmed 210 Fed 2d 247) or if she intended to report jointly (Hyman B. Stone, 22TC 893). In the present case, neither spouse filed returns for 1947, 1949, or 1950 and the wife is, accordingly, only liable for tax on her share of the community income for those years. Consequently, taxpayer is not liable for the joint assessment of 1947, 1949, and 1950, and it is proper to recompute her tax on the basis of the delinquent returns which have been filed.